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HEARING

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STATE OF CALIFORNIA

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ROOM 3191

SACRAMENTO, CALIFORNIA

MONDAY, JANUARY 5, 1987

1:20 P.M.

Reported by:

Evelyn Mizak
Shorthand Reporter

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APPEARANCES

MEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR JOHN DOOLITTLE

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Appointments

ALSO PRESENT

CARL B. WILLIAMS, Chief Deputy Director
Department of Social Services

SENATOR DIANE WATSON

I N D E X

	Page
Proceedings	1
Comments by SENATOR WATSON	1
Governor's Appointee:	
CARL B. WILLIAMS, Chief Deputy Director Department of Social Services	3
Comments by SENATOR WATSON re:	
Personnel	3
Education and Training	3
SENATOR GREENE's Concerns	4
Balanced Work Force	6
Questions by SENATOR MELLO re:	
McMahon Letter of 12/30/86	7
Policy Commitments	8
Questions by SENATOR PETRIS re:	
County Start-up Funds	10
Time Schedule for Start-up	12
Motion	14
Substitute Motion	14
Discussion	14
Committee Action	15
Adjournment	15
Certificate of Reporter	16

P R O C E E D I N G S

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CHAIRMAN ROBERTI: The Committee will come to order.

The item of business before us is the appointment of Mr. Carl B. Williams, Chief Deputy Director of the Department of Social Services.

We took testimony last month, and Senator Greene had indicated he wanted to testify again today. Unfortunately his mother-in-law passed away and he will be unable to be here.

Senator Watson, you wanted to make a statement.

SENATOR WATSON: Thank you, Mr. Chairman and Members.

I wanted to come for this final leg of the hearing to restate my position.

As you know, I was one of the few who did not support the welfare reform, but knowing that it was going to go through, and it has now been implemented in several counties, I am here in support of making this the most beneficial program for the recipients.

That will take strong guidance at the State level and the Department level. And I am hoping that the leadership will guarantee that children will not be hurt by any policies that come out of Sacramento; that the reason for being of AFDC is to protect the health and safety of children. That is my concern.

And if we find need to punish the parents, I would hope that it would not affect the children.

So I am here to ask that Mr. Williams commit himself to see that the Workfare program, welfare program GAIN, as you have

it, will run according to the intent of the Legislature, keeping in mind that the program was set in place to provide and protect children.

There's no room to be vindictive. There's no room to be punitive in any system that's established by the Legislature. And if we can all work together, then we can see this State become a model for those other states that are waiting to see what we do.

So that is my plea to you. I'd like a commitment; I'd like open communication; I'd like you to come to us if we can help you; I'd like to be able to go to you if we find that there are problems.

I would hope that the county directors adhere to the stipulations in the bill, and also the intent of that bill, and not make the kind of shortcuts that will really damage what we're trying to do.

So that was my purpose for being here. The Rules Committee has not made a final decision, but my concern was to ask for a commitment on the part of the person being questioned here; be sure that the program runs properly and according to the input that all of us had on the program.

CHAIRMAN ROBERTI: Thank you Senator Watson.

SENATOR WATSON: You're welcome.

CHAIRMAN ROBERTI: Mr. Williams, would you like to maybe address Senator Watson's comments and any other comments you'd choose to make.

MR. WILLIAMS: Senator, you have my commitment as you've asked.

We have set in place policies to date that are directed at ensuring that this program is implemented the way the Legislature intended it to be.

And we are not at all interested in being punitive with children or, for that matter, with adults. We want to see adults leave the rolls not through sanctions and penalties, but rather through employment. That is your intent and that's the intent of the administration.

SENATOR WATSON: I would hope, too, that in putting this program together piece by piece, that you will also keep an open mind and aid the appointing of staff personnel that could be reflective of the recipient population. I would hope that you would go out of your way to see if there was some balance in the unit. That's one of the things that you know I've been concerned about, you know that Senator Greene has been concerned about, too, that we have people that represent what the population of California is all about. And we don't make it a bastion of one ethnic group, or one racial group; that we open it up to women, to minorities, to people who wouldn't have a chance, because I think that's the only way this is going to be successful is that it be an open process and a process that is balanced.

I know my colleague Bill Greene was very concerned about the education and training program. I would hope that you and he could sit down, if this is ever possible, and work that out. I think that still is outstanding, and I think has to be worked out.

I think that Senator Greene was stating a position of grave concern over what happened to what he thought was a commitment on the part of the administration and on the part of the former Director of the Agency.

So the training aspect to this, I think, still has yet to be worked out, and there has to be a commitment made on your part to see that it follows along with what was intended. I think that's the bane of contention there, and that has to be resolved. I think you're aware of it.

MR. WILLIAMS: Senator, responding to you in reverse order, I would be delighted with an opportunity to sit with Senator Greene and to try to work with him on this program. He had a lot to do with it, was an important part of it as it passed through the Legislature, and I would hope that any personal concern that he might have could be set aside for the greater good of this program.

SENATOR WATSON: You might want to put that in writing.

MR. WILLIAMS: I have, Senator, in a personal letter to him. I'm waiting for a response.

SENATOR WATSON: And I in no way am speaking for him.

MR. WILLIAMS: I understand.

SENATOR WATSON: I am just reflecting on his concerns. We've talked about them, and I know and you know, and all of us know how strongly he felt in the hearing.

MR. WILLIAMS: Certainly.

SENATOR WATSON: So it's still a problem that is not resolved yet. It's still outstanding. And right now I think he

feels disillusioned at the fact that programs can go forward, and because of what has happened in the past.

In some way that has to be taken care of.

MR. WILLIAMS: I would ask you, Senator, for your help in trying to reach that, to use your office to assist in getting the two of us together. I would appreciate that very much.

(Laughter.)

SENATOR CRAVEN: Wear your asbestos suit.

SENATOR WATSON: I certainly will try to be the most positive force of communication. I have been that in the past. I've talked with you; I've talked with Senator Greene. We've all talked, and we'll see. But that has to be taken care of. We'll just proceed from here.

MR. WILLIAMS: On the other issue of minority hiring, as I indicated at the last hearing, our record for minority hiring in this unit that I manage is, in my view, has been an example for many other organizations.

SENATOR WATSON: Don't think you have to stop there.

MR. WILLIAMS: I'm not.

I wanted to tell you one bit of good news.

SENATOR WATSON: Good.

MR. WILLIAMS: I tried to reach you during the interim.

Dell Sales, a Black woman, has been appointed to a middle management job over the Appointment Services Branch that will be integrating with the GAIN program, and that's a small step, I understand, but a step I think in the direction that you some interest in.

SENATOR WATSON: Well, if you will just promise that you will affirmatively see that there is balance, I think a program of this magnitude cannot run without people who reflect the population they're serving. There must be somebody in government that can do that job, and I think that it would be something better in the hat of the person who'd go out and recognize this.

MR. WILLIAMS: You have my commitment, Senator.

SENATOR WATSON: Government has to be open at every level, and that's something that I'm very concerned about personally.

MR. WILLIAMS: I'd like to point out not only my personal commitment, but the Director of the Department of Social Services is very committed to bring balance to the work force, and we are all under specific requirements to make sure that we bring our minority hiring up to a level that is at least parity with the general population.

SENATOR WATSON: Well, I want the Committee to know that my committee, myself, my office, will be watching very closely what happens with GAIN. It's something I've been very concerned about, as all of you know. I've spoken out on it in the printed media, and on television and so on, because I had my doubts.

I am not interested in being an obstructionist. I'm not going to impede the progress, but I will be there to see that the program serves the people in the most beneficial way, and I'm sure that's the commitment of my colleagues.

I don't think anyone wanted it to be punitive. I was concerned that there were aspects in it. I still don't like the

Workfare, and I still wouldn't support it because that's in there.

But being that it is law, being that there are districts that are implementing the program, I will watch over it. I'm on the Joint Oversight Committee to see that it's implemented according to the intent of this Legislature.

CHAIRMAN ROBERTI: Thank you, Senator.

Senator Mello.

SENATOR MELLO: I can appreciate Senator Watson's desire in trying to strike a firm commitment from you, but the letter that's here from Linda McMahon signed on December 30th, I'm wondering just how much authority you have inn these over all programs. It sort of conflicts with your statements. It says:

> "It should be noted that these response reflect the Administration's policies in the identified subject areas; such policies are being effectively implemented by Mr. Williams. Were Mr. Williams not to be in his current position, his successor would be responsible for maintaining these same policies."

It appears that you're not calling the shots, but the administration is calling the shots.

MR. WILLIAMS: Senator, the way this works, basically, is on policy recommendations on any policy issue, we make recommendations, and we are not independent. I am not an independent entity. I report to the Chief Deputy Director. The

Chief Deputy Director reports to the Director, and so on up through.

These policies have to be reviewed up the line. I don't simply sit in isolation and make them.

SENATOR MELLO: So any commitment you give to Senator Watson would just be your own personal feelings. They could be overturned by several people up the line if they disagreed with that.

MR. WILLIAMS: On policy issues, of course that could happen.

But I don't believe there's any question that the administration supports running a program that's fair and equitable, that is conscious of the concerns that Senator Watson raises. I don't think there's any question about that.

We're talking here in this case, in the letter you're looking at, is about the details of policy that have to be worked out. And there are hundreds of them, hundreds of items, and we make recommendations. The Chief Deputy and the Director review them and make decisions. Those have to be consistent with the administration's policies. That's the way the Executive Branch works.

SENATOR MELLO: But you're saying, here's a set of policies here, and whether A, B, C, or D or who is in that position, these policies are going to be carried out with their goals rather than what staff, or administrator in your case, would want.

I see a conflict in her letter.

MR. WILLIAMS: Senator, no, I don't think so.

I think on any details of policy, whether we require someone to work X number of hours or Y number of hours, those kinds of considerations are always reviewed if there is policy latitude available to us.

If the statute's clear, there's no question as to what the policy is.

I think with respect to what Senator Watson is asking for the statute is very clear. We are not in this to punish, to throw people off public assistance. We're in this to get people jobs, and that's the only way we want to see them leaving.

That's clear in the statute. That is not an open issue; that is not a question that can be debated.

What I'm talking about in terms of policy decisions are those hundreds and thousands of details of policy calls that have to be made that are relatively minor, relatively flexible areas that we have to make decisions in.

I don't think there's any doubt about the commitment policies.

SENATOR MELLO: Thank you.

CHAIRMAN ROBERTI: Thank you.

Is there any opposition in the audience?

SENATOR PETRIS: May I ask one question?

CHAIRMAN ROBERTI: Senator Petris.

SENATOR PETRIS: I have a question that bears on what Senator Mello was saying.

I don't know how much input you're going to have in recommendations when it comes to the money for carrying out the program.

I've gotten in touch with some of the counties in the Bay Area, and the most common complaint I got from them was not against you, but against whoever's makings decisions.

For example, they don't have the money to set up the data processing system so they can track people. Now, one county is doing it manually. Another county said: It's impossible for us to do it manually. A third county said: We don't see any of the money in sight to give us this instrument, and if we don't get it, we can't take part in the program.

Now, how do we overcome that obstacle? You're familiar with that?

MR. WILLIAMS: Yes, I am, sir, and I am involved in the policy discussions concerning funding and in the policy concerning data processing.

I'd like to separate that if I could from the program operations, however.

The funds are available for program operations. To the extent that we negotiate reduced amounts from what counties request initially, we always indicate in our approval letter that we stand ready to fund the county fully if it turns out that their assumptions about their costs are more accurate than ours.

We're in a learning period. We don't know exactly what those costs are going to be.

On the data processing issue, about a year ago the Department of Social Services recognized this was going to be a concern in many counties. Indeed, we were concerned because our evaluation is heavily dependent upon available data.

We also recognized that the size of this program required that this be managed on a data processing basis rather than on a manual basis.

We made a proposal to the counties at that time in which we at the Department of Social Services would work with them and put together what amounted to three separate basic data processing systems. The reason we offered to do this was, we knew that if they make individual requests that they all have to go through a very lengthy, very difficult approval process through the State, through the federal government.

We thought that if we could work with the counties to put together three basic systems, and then make modifications to those systems to meet individual county needs, we could go at once for approval of these systems, get a basic contract with the providers to put these in place, and then augment them or modify them as needed for new counties as they came on line.

The County Welfare Directors Association, for their reasons, decided that they did not want to do that. They were concerned, I believe, that such an approach would restrict their flexibility in operating an managing their own data processing and programs, and that in some way the data processing might control how they managed and structured their programs.

So, as an alternative, the counties decided that what they would do would be to make individual requests for data processing funds, which several of the counties have made, and which the federal government has approved at least one of.

This is the problem that we identified over a year ago. We have now gone back to the counties and said: This is not going to work very satisfactorily in our view. We would like to make the offer again to you. If you can decide among yourselves which three, four, five basic systems you would like to have, the counties are now considering that alternative. We have not heard their response yet.

If the counties proceed on an individualized basis, they have to go through a tremendous amount of work, and a tremendous, difficult process of approval both at the State level and at the federal level.

We think that going through this 58 times is not the way to do it. That's why we made the original request, the original proposal. And that's why we've come back with a similar proposal to them to try to solve this problem.

SENATOR PETRIS: When do you expect to hear from them?

MR. WILLIAMS: Well, we're expecting to hear from them this month. We meet with them, the County Welfare Directors, on a monthly basis. And we requested of them again last month that they give us a response, and they're working on that.

SENATOR PETRIS: Now, if they come back with a response, and they say: Okay, we'll go for five, what time schedule do you see thereafter, assuming they agree with you, for getting things in place?

MR. WILLIAMS: This is difficult for me to answer, Senator, because I am not completely familiar with how fast we can get the federal government to approve these things.

But I would suspect that we should be able to get this done between 6 months and maybe 15 or 16 months. The whole process of getting federal approval and putting a request for a contractor to make proposals that are out, and get the basic contracts in place to build these systems.

How long it will take to build them once we've gone through this process, I can't -- I can't say. I would suspect that it will take probably the better part of 18 months to two years to get the whole thing in place and ready to go in the counties.

SENATOR PETRIS: Now, for those that can't do it manually, that means a very important part of this doesn't really get off the ground.

MR. WILLIAMS: That's correct. We're particularly concerned about this because not only is the Legislature asking for information about progress relative to the programming, but our research and evaluation organization is also in desperate need of this information.

So, we had to do everything we could to make that period of time shorter, but there are no guarantees that the federal government would give us as much attention as we would.

We would make a full court press effort to get this done quickly if we could get the counties to agree among themselves on which four, five, six basic systems that they would like to have.

SENATOR PETRIS: Thank you.

CHAIRMAN ROBERTI: Is there a motion?

SENATOR CRAVEN: I move Mr. Williams' confirmation.

CHAIRMAN ROBERTI: Senator Craven moves Mr. Williams' confirmation to the Floor.

SENATOR MELLO: Mr. Chairman, I'd like to make a substitute motion, and I do this based on the courtesy to two of our Members, Senators Greene and Watson, who have testified, I think, at great lengths with various concerns against Mr. Williams.

On the other hand, his one-year term will be up tomorrow, January 6th, so it would be unfair, I think, to hold it longer, but I think the issue should go to the Floor, should be decided there by the entire Senate without a recommendation from the Rules Committee.

So I would therefore that his name be sent to the Senate Floor without a recommendation.

CHAIRMAN ROBERTI: On the substitution motion before us by Senator Mello, that Mr. Williams' confirmation be submitted to the Senate Floor without recommendation.

Any discussion or debate?

Hearing none, on the substitute motion, the Secretary will call the roll.

SENATOR DOOLITTLE: Is there going to be a subsequent roll call assuming that the motion passes?

CHAIRMAN ROBERTI: If this motion passes, it goes to the Floor. If it's defeated, then Senator Craven's motion would be before us.

SENATOR DOOLITTLE: I'd like to vote for the stronger motion by Senator Craven, and I'd like to oppose the substitute one.

CHAIRMAN ROBERTI: Then why don't you oppose the substitute or abstain, whatever you want to do. If the substitute motion has three votes, you'll have one more chance on the Floor anyway.

SENATOR DOOLITTLE: Okay.

CHAIRMAN ROBERTI: Secretary will call the roll.

SECRETARY WEBB: Senator Doolittle. Senator Mello.

SENATOR MELLO: Aye.

SECRETARY WEBB: Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Senator Craven. Senator Roberti.

CHAIRMAN ROBERTI: Aye.

SENATOR DOOLITTLE: No to aye.

CHAIRMAN ROBERTI: The vote is four to zero; confirmation is submitted to the Floor without recommendation. We'll vote on it today.

(Thereupon this hearing before the Senate Rules Committee was adjourned at approximately 1:40 P.M.)

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CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 6th day of January, 1987.

Evelyn Mizak
EVELYN MIZAK
Shorthand Reporter

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APPEARANCES

MEMBERS PRESENT

SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR JOHN DOOLITTLE

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

MEMBERS ABSENT

SENATOR DAVID ROBERTI, Chairman

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Appointments

ALSO PRESENT

PERRY H. DYKE, M.D., Member
State Board of Education

JIM C. ROBINSON, Ph.D., Member
State Board of Education

I N D E X

	Page
Proceedings	1
Roll Call	1
Governor's Appointees:	
PERRY H. DYKE, M.D., Member State Board of Education	1
Questions by SENATOR MELLO re:	
Education Cutbacks	2
Ways to Improve Education	3
Local Control	3
Bilingual Education	4
Program Funding	5
Drugs on Campuses	7
Questions by SENATOR PETRIS re:	
Top Three Priorities	8
Dropout Problem	9
Curriculum	11
Educational Research	13
Bilingual Education	14
Questions by SENATOR DOOLITTLE re:	
Family Life Guidelines	18
Motion	20
Committee Action	21
JIM C. ROBINSON, Ph.D., Member State Board of Education	21
Questions by SENATOR MELLO re:	
Ways to Improve Education	22
Retention of Quality Teachers	24
Local Control	25
Questions by SENATOR PETRIS re:	
Bilingual Education	26
Local Control	27
Bilingual Education	30
Lowering of Standards	31
Bilingual Education Criteria	32

I N D E X (Continued)

	Page
Motion	37
Committee Action	37
Termination of Proceedings	37
Certificate of Reporter	38

P R O C E E D I N G S

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VICE CHAIRMAN CRAVEN: I call this meeting of the Senate Rules Committee to order.

Call the roll, please.

SECRETARY WEBB: Senator Doolittle. Senator Mello.

SENATOR MELLO: Here.

SECRETARY WEBB: Senator Petris.

SENATOR PETRIS: Here.

SECRETARY WEBB: Senator Craven.

VICE CHAIRMAN CRAVEN: Here.

SECRETARY WEBB: Senator Roberti.

Three present.

VICE CHAIRMAN CRAVEN: We have three Members.

We have a rather short agenda today. Let's skip for a moment the reference of bills and go to Item One, Governor's Appointees required to appear, the first of whom is Perry H. Dyke, M.D., Member, State Board of Education.

Would you please come up, and we will ask you what we ask all of the Appointees: Why you feel that you are qualified to serve in this position?

DR. DYKE: I've been involved in education for a good number of years, both from the point of view as a pediatrician with children with learning disorders, from the parent perspective, and from the local board perspective. And I think I have a different viewpoint to bring to it than a professional educator, and therefore I feel that I am reasonably qualified.

VICE CHAIRMAN CRAVEN: Doctor, how long have you been serving in this capacity?

DR. DYKE: Since the first of May.

VICE CHAIRMAN CRAVEN: That was the beginning of your service --

DR. DYKE: Right.

VICE CHAIRMAN CRAVEN: -- with the state?

Senator Mello, Senator Petris, do you have any questions of Dr. Dyke?

SENATOR MELLO: Just sort of philosophically, I wonder just what sort of influence the State Board of Education will have on helping to improve California's education as it pertains to the national situation.

I think many of us feel that we were on the road back to regaining the excellence that we thought we had some years ago, and I guess the question to you is: What influence do you think you would have on the present administration on helping to turn around our present decline and also some of the recent actions that have gotten a lot of people angry around the state about the cutbacks in education?

DR. DYKE: I think there are a lot of different ways to look at statistics, for one thing. I think that it's not actually a cutback; it's a cutback in that we're not getting as much increase as we would like.

I think that we, of course, would like to see more money given to the K-12 education budget, but I think that we are realists enough to realize that with the Gann limitation and

deficit structure so that there is not money available right now, that perhaps there are other things we can do to keep up the reform movement and to keep the excellence in education movement moving forward, even without a major increase in funds. I think that's one of the things we, as a State Board, would like to explore and would like to work with the Governor and the Superintendent of Schools to figure out just what direction we should be moving in.

SENATOR MELLO: Let me ask you more specifically, what are some of these things that you cite as possible ways in which we can improve education without increasing the spending or revenues?

DR. DYKE: I think the whole issue of categorical programs needs to be looked at very closely. The amount of funding that has gone into the administration of the categorical programs, the hiring of aides, and so forth, perhaps if the districts were given more local control of those funds, perhaps they could make a different use and a more educationally sound use of some of those funds.

SENATOR MELLO: But I think the concern that was expressed here is the question of local control or state mandates. I think the fears that many of us had is that if we were to allow categorical programs to be determined as a local option by local control, many of them would not be implemented on a local level.

DR. DYKE: I think that's not giving due credit to the local people and their dedication to the education of children in

their district, because I think these people really do have the interest of those local people at heart and really will do what is needed to see that their students are educated in the right way.

Obviously that's not 100 percent, and there may be some falling by the wayside. I think that's true, though, with the categorical programs, too. I think it's -- it's an area that needs to be tried.

I think we have become very dependent on categorical programs and special funding for special purposes, and I think that perhaps the time has come to look at a different way to do things.

I think the money needs to be there. I'm not saying we should cut back the money. The money needs to be there, but perhaps some of the controls and regulations that are put into some of these programs could be lessened and that money could be better spent.

SENATOR MELLO: Do you think with local control that they would implement bilingual education in areas that had limited English and non-English speaking children, but the majority of the area was not of that ethnic group? Do you think a local board would then in fact implement bilingual education if they had local control?

DR. DYKE: I really do. I do believe that, because I think the teachers and the school administrators are very much aware of special problems that those students have. And I think that they know that -- the teacher in the classroom knows that

she can't teach these children if they don't speak a language that she speaks and can communicate with them.

And I think that the teachers will implement programs to see that these children learn English.

SENATOR MELLO: Do you think that our bilingual education program has been a success or a failure?

DR. DYKE: I wish that there were data to say one way or the other. I think that one of the problems with the bilingual program is that there are conflicting data as to how successful it's been.

I think definitely in the good programs it's been a success. I think that definitely in some of the poorer programs it hasn't been a success.

I'm not hedging my bet. I just think really we don't know the answer to that question.

But I think it's an open enough question that we should be willing to explore other ways to teach these children how to speak English than our traditional bilingual programs.

SENATOR MELLO: What's your feeling about these six programs that were funded for a half a year, like the rural school transportation fund, small school funding, special education, ESL program and so forth, that are now sort of in limbo until the issue gets resolved of whether they'll be funded through the Public Employee Retirement System, which has already been found to be, by the courts, not held up to be legal, or until the administration agrees to fund them through the General Fund?

DR. DYKE: I think there are various merits to those programs. I think so many -- in several of those programs there's an overlap with other programs. A lot of those children are being served with several different programs. And I think in those cases, these special programs are not imperative, and that we don't necessarily need some of those programs.

SENATOR MELLO: You mean those six programs are not needed?

DR. DYKE: No, I don't mean all six of them are not needed. I mean that they're needed to greater and lesser extent.

Again, I think that the money is needed at the local district level to serve these children's needs. I don't think we necessarily need those particular programs as a way to spend that money.

SENATOR MELLO: What programs are those that are identified that you would feel we don't need?

DR. DYKE: I would feel that the Miller-Unruh Program, that the urban impact aid -- those children are probably served in other ways that could be served. Those two in particular.

I can't offhand recall what the other six programs are.

The GATE program, I think, is questionable. I think those children do have special needs as these other people do, but I think if the district -- if the local district is doing a good job with the money they have, that they can serve these students without the special requirements of these programs.

SENATOR MELLO: Another issue, what's the solution for trying to curb and halt the sale of drugs on our school grounds

and have people that are pushing drugs on or about our school grounds?

DR. DYKE: I don't have the answer to that one. It's certainly a serious problem in our schools, and I think we definitely need the drug education programs, and we saw one yesterday that the PTA is just unveiling for kindergarten and first grade children, teaching them to say no to drugs.

Whatever we can do in this area as far as enforcement of rules and regulations as to who can come on campus to sell drugs is critically important and to teach the students that this isn't the way to act and to behave.

We need to do what we can in the schools to put some values into these students' lives that they don't need drugs, that they can do other things.

SENATOR MELLO: Thank you. I think we're going to see a lot more local control with your philosophy on the School Board. I hope it works as you claim it will.

VICE CHAIRMAN CRAVEN: Very well, any other questions of the Doctor?

SENATOR PETRIS: Yes, if I may, Mr. Chairman.

What do you see as the priorities as a Board Member now of several months' standing?

I know it isn't quite enough time for you to really get the full picture, but you have been to a lot of meetings, and you've encountered a whole range of problems in our K-12 education in California and how that impacts on higher education.

What do you regard as the most important priorities, let's say the top three, that you as a Board Member would like to see addressed and solved? The top three problems or priorities, any way you want to put them. They don't have to be in the form of problems.

DR. DYKE: Don't have to be problems.

SENATOR PETRIS: They might be in some area where we're doing very well, where you think we ought to do better.

DR. DYKE: I think the chief impact that the Board can have is in the area of curriculum. And I think that's a terribly important area, and that would be very high. That would be the highest.

SENATOR PETRIS: You're chairman of that subcommittee; aren't you?

DR. DYKE: No.

SENATOR PETRIS: You're not?

DR. DYKE: I'm on it, but I'm not chairman.

I think that the curriculum, development of the frameworks, and the whole textbook adoption that the State Board is involved with is critically important to what our children learn and whether or not they learn. And so I think that is a very high priority on my list.

The area of teacher credentialing and teacher preparation is another area that the State Board would like to be more involved with and have some impact on the various legislation that's coming forward from the Commerce Commission and so forth, as to what kind of requirements and what kind of --

what kind of requirements teachers should meet, and what kind of teachers we're going to be turning out for the next generation is another terribly important issue.

A third issue is probably the dropout, and what we're going to do about the dropout rate.

SENATOR PETRIS: What is it now, 34 percent?

DR. DYKE: Statewide that sounds about right. I'm not actually sure of the figure. In some areas it's as high as 40-50 percent.

SENATOR PETRIS: Have you been following some of the legislation we've had in that? We had a lot of bills last year, I don't know what we have this year, trying to address the dropout problem.

Are you following any particular bills or pushing them, or supporting them or opposing them?

DR. DYKE: Right now in this current legislative session I don't know of anything specifically in that area, no.

We will be looking at whatever comes along.

SENATOR PETRIS: Are there any bills that failed to make it last year addressing that problem that you feel we should have adopted?

DR. DYKE: I can't think of any, no, sir.

SENATOR PETRIS: How would you tackle the dropout problem?

DR. DYKE: Well, again, I don't have the answer for that.

I think that more involvement of the teacher with the student of the local school. If we could have -- if our schools weren't such large, impersonal entities, I think it would make a greater impact on the students, and they would be more inclined to stay in school.

I think we need to encourage the smaller classroom size, or at least some kind of break down within our large high schools where a students feels that he is part of the community and is made to feel some personal self-worth within that high school community is a very important area.

The whole issue of drugs, and teen pregnancies, and all that, features very highly in our dropout problem also. We need to address those problems.

SENATOR PETRIS: Are those the primary causes?

DR. DYKE: Probably the family structure is the primary cause, the lack of incentive, the lack of motivation to go on, the feeling of hopelessness, of "I'm not going to graduate anyway, and I'm not going to be able to get a job anyway, so why bother to stay in school," is probably the prime cause.

SENATOR PETRIS: How do we turn that around? Provide the jobs? How do we provide the inducement?

DR. DYKE: Well, you know, I wish I knew.

I think if we could -- some areas have shown that, yes, when the job community, when the business community gets involved with the schools and says that we will give jobs to those students, that's made a tremendous difference in some places that have been able to do that.

SENATOR PETRIS: How does our rate compare to other states, the dropout rate?

DR. DYKE: I'm not certain about that. I think it's fairly comparable. It's certainly a nationwide problem.

SENATOR PETRIS: I didn't mean to interrupt you there. You were going to go on to other things that might be done.

DR. DYKE: To serve the dropout problem?

SENATOR PETRIS: Yes.

DR. DYKE: Well, I've lost my train of thought.

SENATOR PETRIS: That's all right. Let's go to another one, curriculum.

How would you change it? What would you do to improve it?

DR. DYKE: I think a lot's being done in that area now. I think there are a lot of -- we're trying to follow the national councils in the various subject areas, and the things that they have shown that work and that don't work.

For example, in math, that you need the problem solving rather than just the drill and practice kind of math learning. So we're trying to get textbooks that go in that direction, that help the teachers teach in this way, so that our children have an understanding of math and not just learn it by drill and practice and then forget it.

In the area of English and reading, that it matters what kind of material that these children read when the first start school. It needs to be good literature, that you need to start out not with just dry, boring, dull things, because if they read

that in the beginning, they're not going to ever become readers. That you need literature.

SENATOR PETRIS: Let me ask you, why should we have that problem in the first place? Who is it that picks the dry and boring material? Is it the teacher who takes the choice of certain options the teacher is given? Is it the local school board? Is it the other group that sits on high and does the text selection for the whole state? Who picks this stuff? People who have never been in a classroom maybe?

DR. DYKE: There are a lot of -- well, you know, the easy answer to that is the textbook publishers. That's the easy answer.

Obviously, the textbook publishers are lead by people in education who have said this what we want.

I think there was a long period of time when we felt that we needed to lower the standard of reading, for example, in our social studies textbooks so the students could learn the social studies even if they couldn't read very well.

I think now the --

SENATOR PETRIS: Whose idea was that?

DR. DYKE: Obviously that was the educators somewhere along the line.

SENATOR PETRIS: Was that a national thing?

DR. DYKE: That was national, yes, that was national. And the textbooks were that way ten years ago. Now they're turning around, and they're coming up to grade level again in reading ability.

These things go in cycles, and unfortunately I think that educational research has not been very farsighted. There has not been a lot of educational research. And a lot of what you read, you can read in two different directions: you can read that it works, and you can read that it doesn't work, any particular thing you look at.

I think we need more valid educational research as to what does work with students and what doesn't.

SENATOR PETRIS: Who's doing it? Our schools of education?

DR. DYKE: Our schools of education should be. Generally it's people like the PACE group out of Stanford that's doing some.

SENATOR PETRIS: Yes, I have a PACE report here.

DR. DYKE: Yeah, it's the groups like that that are actually doing most of the research, people like the Far West Laboratory that does some of the research.

SENATOR PETRIS: I heard a story about a teacher who was correcting papers in history. And somebody happened to look at one of them, and she gave the student a very good grade, but it was full of misspellings. The spelling was just awful.

And she was asked about it. She said, "Well, I'm not their spelling teacher, so I don't correct spelling."

Where did they learn that? Is that taught in our schools of education? Is that a fluke, an exception?

DR. DYKE: I don't think that's a fluke. I think a lot of teachers of creative writing, for example, don't correct

grammar and spelling mistakes because they want the creative writing to be creative, and they feel that that might do some stifling.

SENATOR PETRIS: Injure the psyche?

DR. DYKE: Right.

There are a lot of different ways to teach. You know, I'm not an expert in that by any means. But I think what we do need is some valid data that shows that one method works and the other doesn't.

SENATOR PETRIS: You were asked earlier about the bilingual thing. As you know, this is a problem that isn't going to go away, and there are different schools of thought. Some Legislators are interested in picking out the best programs that you've described, the best ones are doing well, and reinforcing that kind of thing in other areas. There are others who think they ought to just eliminate it, get rid of it.

In fact, there's a bill by Assemblyman Hill who does pretty much that. I think as I read the bill very hurriedly, it's got a long list of things that recite what's going on now, and then the next paragraph says all that's repealed.

I don't know what he wants to do, but I personally am frightened by that bill, even though there are areas for criticism of the way it's been handled in some areas; I think in other areas it's done a lot of good.

I'm interested in what the viewpoint of the Board as a whole is. Do you spend time on bilingual at all in your meetings, evaluating, or trying to figure out how to solve the problem?

DR. DYKE: We took --

SENATOR PETRIS: In this report is indicated the demographics of the state. Out of 2.4 million children in school statewide, 28.7 are Hispanic. And we can't ignore that fact. Some of them speak beautiful English and don't have a problem, but as you know a lot of them don't, and something has to be done there.

Can you give us some help on that?

DR. DYKE: The Board as a whole did take a position last year in favor of Mr. Brown's bill for bilingual education. We thought there were changes that needed to be made in the previous bill, and we wanted them incorporated into the bill that was defeated last year, or that was vetoed last year. I guess it was defeated.

The current situation with Mr. Hill's bill is hard to comment on because he made a presentation to us at our last Board meeting, but there are a lot of holes still to be filled in as to what he actually would do in various situations in that bill, and we did make some suggestions about things we were concerned about.

SENATOR PETRIS: I assume, if he's like the rest of us, he wants you to support the bill, and he's explaining to you what he's doing.

I haven't studied the bill. From what I see, it looks like it's pretty drastic.

Your members made some suggestions to him to improve the bill? Is that it?

DR. DYKE: Right. We suggested that there should be some accountability in the bill, that the districts should be held responsible for making sure that students did learn English; that there should be some exit criteria, that if the students are in a bilingual program, there should be some exit criteria to say when they get out of the program.

SENATOR PETRIS: That's always been one of the hot issues in the last few years.

DR. DYKE: They stay in too long.

SENATOR PETRIS: Yes. I think we all agree there ought to be -- the sooner they can exit, the better, because it means they've arrived at a facility in English.

There's a big difference as to what level that should be, and where you test it and so forth.

Have you arrived at a consensus yet on that?

DR. DYKE: No.

SENATOR PETRIS: Do you personally have a view?

DR. DYKE: My personal view is that probably three years in a bilingual program is long enough. That probably they have -- the students have gained the maximum amount after three years.

That doesn't mean they necessarily will be good English speaking, but maybe that means that the program that they're in is not going to work for them if it hasn't worked in three years.

So I would favor some sort of limitation such as that to the program.

I think we need a variety of programs. Again, I think it goes back to the fact that we don't know what works best with

these students. You know, there are ten different ways to teach a child to read; there are going to be ten different ways to teach a Spanish speaking child how to speak English, or how to become fluent in English. And I think we need --

SENATOR PETRIS: We haven't done too well teaching English speaking children how to read and write.

DR. DYKE: That's true.

SENATOR PETRIS: That's part of the problem, I guess.

DR. DYKE: That's true, but at least I think we are open in our approach as to how we do that. I think we have been very restrictive in our approaches to bilingual education, and we need, I think, to add some variety, to give a local district the option to try a different way if they think they can do better a different way.

SENATOR PETRIS: So you think the flavor of the Board is in the direction of more variety, more resourcefulness in tackling the problem, but not in the direction of saying: Leave it alone; if they can't learn it, too bad.

Your group isn't advocating eliminating bilingual, is it?

DR. DYKE: I don't think so. I mean, it would be hard for me to say for certain, but I don't think that's the direction the Board would go.

I think the feeling on the Board's part is that the program needs some changes; it needs some more variety, but that it's a valid program.

SENATOR PETRIS: Do you agree with that?

DR. DYKE: Definitely.

SENATOR PETRIS: Thank you, Mr. Chairman.

VICE CHAIRMAN CRAVEN: Thank you, Senator Petris.

Will there be any further questions?

SENATOR DOOLITTLE: I had a question.

I've signed a letter to the Board which expressed concern of the teaching of homosexuality in a so-called neutral fashion. I think that comes up probably in Family Life Guidelines.

What is your knowledge of that subject?

DR. DYKE: Too much.

We have been very well versed in that subject over the last month or two, I'm afraid.

I think there's a great misconception of what the Board is trying to do, or what these guidelines try to do.

I think the guidelines themselves, I think, are basically very good. I think they have a very strong family emphasis. They have a very strong moralistic emphasis. They say that abstinence, monogamy, that the family structure is definitely all important.

They also talk at great length about the local district and the local community contributing to what is taught in that community; that there should be a district committee that is set up of local people in this community, as well as parents, as well as teachers, and so forth, to say what should be taught and what should not be taught.

And then the guidelines go on to say that when this local district, when this local community committee is going to select curriculum material, that these are the guidelines they should look at when they're selecting curriculum material.

And that's when these different areas are explained in the guidelines, including the one on homosexuality.

So basically what it's saying is that if your local committee decides that you want to discuss homosexuality in your schools, that when you look at material that's to be used in the classroom, look at it on a factual basis; make sure that it does stress the family.

The latest guidelines, I don't know if you've seen them or not, but they -- you know, we do stress that we do affirm the family values first, but we do think that if students have questions about homosexuality, they should be answered, that they should be made to understand that feelings of affection for someone of the same sex does not mean they're a homosexual, such criteria as this.

Now what we're saying is, this is not material that the teacher herself uses in teaching homosexuality. What we're saying is that this community committee uses this information in order to select curriculum material that's suitable for that community. And what's suitable for one community is certainly not suitable for another.

I think my feeling is that homosexuality is prevalent enough in our society that our students are very much aware of it. They have questions about it, and that we should say to our

teachers that this is the way in which you should answer those questions, that we shouldn't ignore it totally.

SENATOR DOOLITTLE: I'm just concerned that when she answers those questions, that to answer them in a neutral fashion does a disservice to the students.

DR. DYKE: Well, I don't think we're saying a neutral fashion any more. We certainly don't use that terminology.

SENATOR DOOLITTLE: Is that a mischaracterization then?

DR. DYKE: To me it is, yes.

I think what we're saying is that family values are affirmed. And if you say that family values are affirmed when you're teaching homosexuality, then that's not neutral.

I think what we're saying is that students have -- in fact, I got a letter today from a teacher who's teaching in this area who says that his students ask him, you know, what does this mean, and what is a homosexual, and am I one if I like so-and-so, and what does this mean?

I think teachers want some guidelines as to how they should answer these questions. And I think we should be able to give those guidelines rather than throw it back to the local districts and have them have to go through all this again and make up their own agendas.

SENATOR DOOLITTLE: I think you should give those guidelines. I appreciate your response.

VICE CHAIRMAN CRAVEN: Very well. Anything further?

SENATOR DOOLITTLE: I'll move the confirmation, that we recommend the confirmation, Mr. Chairman.

VICE CHAIRMAN CRAVEN: Very well.

Let me first ask if there's anyone in the audience who wishes to speak? There appears to be none.

Senator Doolittle moves the confirmation to the Floor. Call the roll.

SECRETARY WEBB: Senator Doolittle.

SENATOR DOOLITTLE: Aye.

SECRETARY WEBB: Senator Mello.

SENATOR MELLO: Aye.

SECRETARY WEBB: Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Senator Craven.

VICE CHAIRMAN CRAVEN: Aye.

SECRETARY WEBB: Senator Roberti.

Four to zero.

VICE CHAIRMAN CRAVEN: The vote is four-zero. The item goes to the Floor.

Thank you, Doctor.

Next is Jim C. Robinson, Ph.D., who is also a Member of the State Board of Education.

Would you tell us why you feel that you are qualified to assume this role?

DR. ROBINSON: Yes, Senator.

First, I would point to my academic training which highlighted areas in school finance and teacher training. And after completing my work in these areas at the doctoral level, I then went on to actually do what I was trained to do.

In addition to that, I have worked on numerous committees locally on K-12 education, have written many reports, have done research in the area, and believe that I am very much familiar with the major issues facing K-12 education in the State of California today.

VICE CHAIRMAN CRAVEN: Let the Committee be aware that Dr. Robinson holds a Doctor of Philosophy from Stanford, as well as a Master's Degree from Stanford, a Master's Degree and a Bachelor's Degree from Cal State University at Long Beach. He's an extremely well-educated individual.

Do we have any questions from any of the Members of the Committee?

SENATOR MELLO: I think with those qualifications, you almost feel like you shouldn't ask him anything.

But as I asked the previous person, I'm a little bit concerned about where California is in the whole education picture. We seem to be cutting back on some of the basic programs, and we're 50th now in class size, and our efforts in support of the number of spending for ADA, of course, is down below the 50 percent level.

I'd just like to get your viewpoint. What's your current philosophy about where we are in education as a state, and what do you think can be done to improve it?

DR. ROBINSON: Well, where we are, I think that we are not at a point wherein we will have to decide whether or not the programs that we've been using for the last five, ten, fifteen years or so are programs we want to go into the 21st Century

with, or whether or not we want to try some new programs based by and large on research, based also on practice, that we feel will do a better job.

Where we are also, well, we are at a point in time now where the students that we would generally call minority students are indeed rapidly becoming majority in terms of numbers, and they present a rather interesting problem to us, a difficult problem to us in terms of instruction. Students from Southeast Asia, students from Mexico, and of course a growing number of lower income students from urban areas, mostly Black students.

Now, why is this difficult? It isn't difficult because these students cannot learn. It is difficult instead because to date we only have one primary way, one proven way, of instruction that seems to get the job done mostly for us. And our problem, then, is that not all students learn equally well through one means of instruction.

We have a very diverse student body now.

SENATOR MELLO: How do we reach out to some of these student groups and offer for them the type of education that is relevant to their needs and also to help them achieve in our educational system?

DR. ROBINSON: Well historically what we've done in teacher training is to say to our future teachers: What you need to do is get an undergraduate degree in an area, say something such as math; upon completion of that undergraduate degree, then you take 15-30 units of education courses, and you're given a credential and you go out and teach.

I think that we're going to have to rather drastically revise the way in which we train teachers in the State of California, perhaps identifying them much earlier on, and certainly putting them through a program in which we will be able to certify that they can indeed teach effectively in a multi-cultural setting.

Right now, I think that we might have some problems with that.

SENATOR MELLO: Getting on to the teacher thing, what would be your idea on how we should approach to make sure that we can hire quality teachers and also keep quality teachers teaching in our schools?

DR. ROBINSON: First of all, the teaching profession itself, I think, has to be looked at again. Of course, you always point to the big item of pay and salary and that sort of thing. I think that's going to be very important.

But getting away from that, again, it's simply a matter of one of the things we'd want to do is take a look at the way in which we train teachers, again, identifying them much earlier on, requiring a little bit more than the 15 or 30 units or so beyond the undergraduate degree, and perhaps sending them out with a letter or something that certifies that this person can teach effectively through use of methodology A, B, or C, or whatever, in the setting for which they will be hired.

SENATOR MELLO: Do you agree that we have lost a large percentage of our highly qualified teachers because of low pay and other situations that allowed them to leave teaching and go into other professions?

DR. ROBINSON: I would not say necessarily low pay. I would say probably we've lost a lot of qualified teachers because we haven't paid enough attention to their call for help. Their call for help, for example, for various programs; their call for help, for example, in handling some of the problems that are presently inundating the schools; their call for help, for example, in administrative and teacher training.

SENATOR MELLO: Like papers and pencils too, right?

DR. ROBINSON: That too.

SENATOR MELLO: What about the bilingual education programs and the so-called categorical aides that we talked to the last person about?

Do you feel that these should be funded for the remaining part of this year and carried on as part of our education curriculum, or should we just allow local control on administering them?

DR. ROBINSON: I think local control is important, to be sure. I think that local school districts do indeed have a better idea as to how to go about training students in bilingual programs.

But to date, I don't think we have in force or a recognized instrument to evaluate bilingual programs. We don't have any way of determining which programs are best, or which programs are not doing much good, or whatever.

But more important than that, I think, we don't have yet a recognized training program for teachers who are going to teach in bilingual settings. And that, to me, is a very, very crucial

and important problem for the Southwest, especially the State of California. Schools of education in the CSU system, in the UC system, have not get begun to develop teacher training programs designed to send someone out who's certified as to being capable of teaching in this setting.

There's one university, I think, that's doing it. I think Stanford University has a program called STEP program that is moving in this direction.

SENATOR MELLO: Thank you.

VICE CHAIRMAN CRAVEN: Senator Petris.

SENATOR PETRIS: Yes, thank you, Mr. Chairman.

To follow on the bilingual, we have some very distressing information about the rates. We know the overall state level is over all about 34 percent. I understand that among this Hispanic children in our state, the dropout rate seems to be the highest.

There are a lot of theories, you know, as to why. I think you've offered some.

If I were to give you a magic pencil that could right the law and said: Forget what's on the books now and what programs we have, assuming you recognize that there is a language problem there, how would you go about solving it? What kind of program would you ask us to enact?

DR. ROBINSON: I guess I've said it basically. I would go after a program that would focus a great deal on teacher training. Again, how do you teach effectively in this area? I would focus on a program that would bring together in a much

closer and a much more meaningful fashion the schools and industry. And I would also focus on a program in which local districts would have a great deal of input in how the program would be organized and developed.

SENATOR PETRIS: Well, one of our problems is, if we overemphasize local districts, and we have a state program that's optional or weak, there are going to be a lot of districts that don't even adopt it.

How do we achieve both a statewide policy that makes it a fair and good program available for all our students, and give a lot of local control without the veto power to reject programs that we feel ought to be part of the statewide requirement or statewide policy?

I see a conflict there, is what I'm trying to say. And I hear a lot of talk about local control.

I'm not a fan of local control. I think we ought to have one school district in this state. Japan has one school district, as I understand it. It's a national policy under the Ministry of Education. Now, they pick local people to run things, but they don't make those decisions locally. And they're just running us ragged, every kind of competition you want to think of.

There are other reasons for it, too. It's a cohesive single ethnic group. They don't have our mixture problems, and differences in different cultures, you know, and sometimes conflicts between cultures, and all that. I realize they don't face that.

But I cringe when I hear a lot of emphasis on local control. I don't know what's magic about local control. It's the local school districts today that are coming to us to bail them out of bankruptcy situations because they haven't handled things well, and because we at the state level have been very stingy about providing the amount of money that should be provided.

I don't know if that's question, but I invite your comment.

DR. ROBINSON: You made the statement.

If I might say something, I guess, by way of some sort of corollary or parallel statement. I would only say that, you know, saying that the State of California perhaps might consider moving into just one major school district -- I don't know if you say that in an honest, sincere manner, or if you --

SENATOR PETRIS: Just to provoke comment.

DR. ROBINSON: Oh, I see.

SENATOR PETRIS: But I'm thinking about it.

DR. ROBINSON: I think, again, you might liken the problem pretty much to distant grandparents and local parents who are there dealing with a 15 year old teenager every day. And the grandparents call to offer advice and solace, and to say: Well, you just don't understand the child. And the parents are there in the house trying to deal with the teenager on a day-to-day basis. Who knows best how to deal with the child?

Well, in this instance, if you were to compare two school districts, say Long Beach Unified School District, say,

with some school district like Monrovia, Cudahay or someplace like that; Long Beach has an awful lot of Cambodians, Southeast Asians generally, who have problems adjusting to traditional educational, traditional American education, but they are decidedly different from the problems of Monrovia with largely Hispanic population and, indeed, entirely different set of adjustments or academic problems.

You would in this instance think that Sacramento academics, or Sacramento politicians, might want the problem handled by local people who are there everyday trying to resolve the problem.

As to how you check this, or how do you make sure that the job gets done, I think that's an entirely different mechanism altogether. I used the term earlier today, so I'll use it again, in the sense that he who pays the fiddler calls the tunes. So I think that there are some ways to make adjustments and to provide checks to make sure that what you'd like to see done here in Sacramento indeed gets done in Long Beach and Monrovia.

SENATOR PETRIS: Let's go back to the bilingual thing. I mentioned Mr. Hill's bill earlier. It says that some of the things that are recited are previously untested pupil who speaks a language other than English in the home shall receive instruction as a pupil of limited English proficiency until an assessment is conducted.

So a child comes to school with very limited proficiency, doesn't speak English at home, certain things happen. That would be repealed by the Hill bill.

1 Do you think we ought to repeal that?

2 DR. ROBINSON: Well, repeal it in the sense of just
3 taking it off the books, I don't know. I'm not sure.

4 I think it's certainly something we should take a look
5 at in view of the success or lack of success we've had basically
6 with what we have been doing.

7 SENATOR PETRIS: What's your perception statewide? Have
8 we succeeded or not?

9 DR. ROBINSON: No, I don't think we've succeeded at all.

10 I think that there's been kind of a lack of success, but
11 also a kind of dumbing down, if you will, of curricula, a kind of
12 dumbing down, if you will, of classroom material in the last ten
13 or fifteen years. I think we should have been doing just the
14 opposite. We should have been doing more pushing; we should have
15 been demanding more.

16 SENATOR PETRIS: You mean of all students or just the
17 language problem students?

18 DR. ROBINSON: The teaching-learning process has two
19 major entities, and that is the teacher and the student. So I
20 would say that we need to take a look at both. We need to make
21 sure that our teachers are well prepared to handle these
22 situations, that they don't go out to teach in Southeast Los
23 Angeles, or in East Los Angeles thinking in terms of going out to
24 earn combat pay, but instead they're actually going out as
25 teachers.

26 So, I would say that we need to take a look at both. We
27 need to make sure our teachers are well prepared, and we need to
28

make sure that the curriculum material used in the classroom is demanding rather than kind of a coasting, take it easy, we'll pat you on the head, hopefully you'll get through kind of thing.

SENATOR PETRIS: I'm not aware of any legislation that has given that mandate to the teachers, to just shove them through, pat them on the back, don't worry whether they've learned or not. I don't know where that comes from.

It doesn't come from any section of the Education Code, as far as I'm aware.

Are there sections of the Code that require the teacher to --

DR. ROBINSON: I'm not aware of any section of the Education Code --

SENATOR PETRIS: So where does it come from? Does it come from local control? Does it come from the State Superintendent of Instruction? Where does it come from?

DR. ROBINSON: I think that generally, again, one of the things that happened in the last ten, twenty years or so, particularly during the '60s as we were attempting to open up society for a lot of people who had historically been denied opportunities, I think we, in opening things up, attempted not to be as demanding as we should have been. And I think that this is perhaps a by-product of that effort sometime back.

SENATOR PETRIS: What you're saying is we've lowered our standards in K-12?

DR. ROBINSON: I'm not going to say lowered our standards. I would simply say we did not demand as much as we should have demanded.

SENATOR PETRIS: We have a trigger of ten in the bilingual thing. If you have ten children in the classroom that have that problem, let's say they don't speak English, then that requires a teacher for those ten.

Now, as in the exit ideal that we talked about earlier, there's a lot of controversy on whether ten is the right number; should it be five or twenty.

Do you have any views on that? Again, Mr. Hill's bill would just repeal that altogether and knock it out.

Do you think that's the way to go?

DR. ROBINSON: Not so much -- I would not pay so much attention to the number. I would simply say that the State of California has an obligation to ensure that all children are educated, and that they are educated in the way in which they are able to live full and productive lives as citizens.

So I wouldn't focus so much on the number. I would simply say that it's important to make sure that all children are indeed educated so that they can indeed support themselves and do the things that most of them --

SENATOR PETRIS: That's a broad goal. I'm trying to find out how we get from here to there. We're not there right now.

DR. ROBINSON: Well, we've said thus far ten. I'm not so sure that we are happy with the results we've gotten from the magic number ten.

So I would say, again, that since there is considerable dissatisfaction with the product that we have today, I would say

again we'd want to review it, take a look at it. If we want to focus on a number again, say eleven or nine, then fine. But again I would say that we might want to be a little more comprehensive than that. I wouldn't just focus on that because once again, when you say ten, you're saying ten students.

I would say fine, if we keep doing this, do we have teachers who can teach? You see, that to me, because the teaching-learning process has those two entities in it, I wouldn't just focus on ten. I would ask another question as a corollary.

SENATOR PETRIS: That is, do we have a teacher available that knows how to do it.

DR. ROBINSON: That's correct.

SENATOR PETRIS: What's your overall feeling about bilingual? The need to reach students who don't speak English? Should we have any kind of programs at all in the schools, or leave it up to the parents to take care of it, or what? Do you think we ought to get rid of bilingual programs altogether?

DR. ROBINSON: Well, Senator, I would rather respond in two ways. I spoke to a group not too long ago who asked me lots of questions about bilingual education. And one of them was a senior citizen who had come to this country some time ago, back in the '30s, and he talked in terms of what happened to him when he arrived in the country. He was an Italian. He said, "I came here; I was unable to speak English at all, and somehow or another I survived."

So he put his question or statement in many, many ways. I would simply codify his statement by saying he was really saying to me, "If not then, why now?" Meaning, "If I didn't have a bilingual kind of program to get me through college, and if during the '20s and the '30s we didn't have that sort of thing at that time, why do we need it now? If not then, why now?"

That's the way he put it.

SENATOR PETRIS: Do you agree with that?

DR. ROBINSON: Well, I would say that given what happened to him, and indeed given to what happened to a lot of people that he lived with, and given what was going on in the 1930s versus what's happening today, I would say that there is room and there should be room in K-12 education for some form of bilingual education. I'm not certain what it is.

SENATOR PETRIS: That's what I'm trying to find out. There's a lot of unhappiness with the present one. I'm trying to ask you where we should go.

As far as that fellow's statement, that's like the President saying to all of us, "I made it to the White House. Why can't you?"

I mean, I grew up in this state. I was born in a foreign culture. I didn't know any English when I started school, but I can see a need in the present situation, for one thing. There weren't generations of Americans beating up on my people in California. They beat up on others; they beat up on the Mexicans and they beat up on the Blacks.

1 Your people weren't allowed to testify in a court of law
2 to certain things up to toward the end of the last century.
3 Now, that does something to people. Do you see what I
4 mean? So you've got generations growing up feeling that they've
5 been constantly put down.
6 The new immigrant coming in doesn't feel that. He feels
7 it in other ways, sure. My father felt it, job discrimination
8 and other things. But it isn't a steady, persistent, constant,
9 universal pounding away by a very large segment of the population
10 against another segment of the population.
11 Now you've got these individual cases coming in. They
12 don't feel that. And they see wonderful opportunities, and they
13 do very well because they see -- they're better motivated because
14 they see the people to whom they came, you know, already
15 succeeding, whereas the others are not able to do it.
16 Anyway, there's a lot of differences there. You take
17 the Asians. Everybody's raving about how well the Asians are
18 doing in school. Well, you know, if I came over from Asia, and I
19 had a culture that went back 5,000 years which worshipped
20 learning and revered teachers, I'd have a different attitude,
21 too. Plus the fact that I'd be grateful to this country for
22 rescuing as many people as possible, including me, and bringing
23 me over here, and giving me an opportunity.
24 That didn't happen to a lot of other ethnic groups.
25 They were refugees, but they were in different situations.
26 I guess what I'm trying to say is, there's kind of an
27 oversimplification there for one person to say, "Well, I came
28

from overseas and I made it, so I don't see why the others can't."

If it were that easy, everybody would be making it. A lot of people born into Anglo-Saxon families whose people came over on the Mayflower, I suppose, who aren't making it either. We can't just point to everybody and say, "Well, I did it. Why can't you?" We need to have a better answer than that.

But anyway, maybe you'll come up with a program for us on bilingual?

DR. ROBINSON: Well, I would say that would be good goal indeed, and I would think that would be something to be done here.

But you know, aside from the groups that have just come over, or those that came over, oh, ten or fifteen years ago, I think that in this country, across the board, not only with the ethnic groups that you've identified, but I think across the board we have many problems in education: in writing, in reading. In Beverly Hills, we've having trouble getting kids back to books and off of drugs. It's a basic problem across the board. And the problem manifests itself differently as we move from one group to another.

SENATOR PETRIS: Yes. I'll say "Amen" to that.

Thank you very much.

Thanks, Mr. Chairman.

VICE CHAIRMAN CRAVEN: Thank you, Senator Petris.

Any other questions? Anyone in the audience who wishes to make a comment?

There appears to be none.

SENATOR MELLO: Move his recommendation.

VICE CHAIRMAN CRAVEN: Senator Mello moves. Call the roll.

SECRETARY WEBB: Senator Doolittle. Senator Mello.

SENATOR MELLO: Aye.

SECRETARY WEBB: Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Senator Craven.

VICE CHAIRMAN CRAVEN: Aye.

SECRETARY WEBB: Senator Roberti.

Three to zero.

VICE CHAIRMAN CRAVEN: All right, the item is out to the Floor.

Thank you very much, Doctor, for your forbearance. I'm sorry that we delayed you, but unfortunately that was beyond our control.

(Thereupon this portion of the Senate Rules Committee Hearing was terminated at approximately 5:32 P.M.)

--oo0oo--

CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 19th day of February, 1987.

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Shorthand Reporter

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SENATE RULES COMMITTEE

STATE OF CALIFORNIA

STATE CAPITOL

ROOM 113

SACRAMENTO, CALIFORNIA

WEDNESDAY, MARCH 11, 1987

2:00 P.M.

Reported by:

Evelyn Mizak
Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR HENRY MELLO

MEMBERS ABSENT

SENATOR JOHN DOOLITTLE

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Appointments

ALSO PRESENT

RODNEY S. ATAMIAN, Member
State Board of Education

I N D E X

	Page
Proceedings	1
Governor's Appointee:	
RODNEY S. ATAMIAN, Member State Board of Education	1
Questions by CHAIRMAN ROBERTI re:	
Recent Board Vote on AIDS Guidelines	2
Board's Reasoning for Vote	2
Questions by SENATOR CRAVEN re:	
Support of Sex Education	3
Teachers of Sex Education	4
Extent of Learning in Sex Education	5
Danger of Sexual Intrigue	5
Questions by SENATOR MELLO re:	
Contribution to Quality Education	7
Focus on Basics	8
Flexible Education	9
Motion	9
Committee Action	10
Termination of Proceedings	10
Certificate of Reporter	11

P R O C E E D I N G S

--oo0oo--

CHAIRMAN ROBERTI: The next item on the agenda is the appointment of Mr. Rodney S. Atamian, Member of the State Board of Education.

It's very nice to have you with us, Mr. Atamian. Why don't you tell us what your background is and why you feel you're qualified to assume this position?

MR. ATAMIAN: Currently I'm a senior at Clovis West High School in Fresno.

Last year I underwent a long -- almost a year-long sort of like a test, I guess, to choose -- for them to pick me. I went through a couple of interviews. I was -- after initial application screening, I went to a convention in San Francisco where we had speeches and gave a presentation, and that's where kind of the students had their input to do their screening. Then the Board had an interview, and then the ultimate appointment was made by the Governor.

I think basically why I think I'm qualified, I think the Board appreciates a student's insight and a student's perspective on some of these issues. And I guess I kind of have a first-hand view of that being a student.

And, you know, not all the time am I going to be a professional of some things. I have to leave it up to the professional administrators concerning administrative items, but I think when there's topics that have to do with student needs, I think they look to me to give them that insight that they don't usually get.

CHAIRMAN ROBERTI: Thank you very much, Mr. Atamian.

Any questions?

Well, you're the first Member of the Board of Education that's here after the guideline on AIDS has come up, so you get to get the questions.

I have only one question, and that is I am, myself, a little bit confused as to why the Board voted that under the general caption of homosexuality, the issue of AIDS would come up.

Why I'm wondering that is two-fold. First, it's not exclusively a -- first, am I correct?

MR. ATAMIAN: Uh, yes, today they did vote to adopt that section in the homosexuality section.

CHAIRMAN ROBERTI: Now my question is, well, I'm interested in how you voted, but also I'm interested as to what the reasoning of the Board was, because since it can be transmitted heterosexually, and over the long-run that is where the greatest threat to the population is because there's just so many more heterosexuals than homosexuals, it would sense like it wouldn't be a proper warning to heterosexuals.

You almost could say: Well, this is a gay disease; it doesn't affect me.

And then the other issue is this isn't in my mind exclusive a homosexual disease. In fact in some countries where it's a problem, it's probably primarily one of heterosexuals.

Now that I've said all that, you're the first Member we have so you get to answer the questions.

MR. ATAMIAN: Well, I think their reasoning was that it started out as primarily a homosexual disease. I don't know the percentages, maybe over 90 percent or something like that.

However, they did address AIDS as well in the sexually transmitted diseases. There was a specific --

CHAIRMAN ROBERTI: It is --

MR. ATAMIAN: It is in there also. So, they kind of went both ways on that.

That was a big debate today. It was really intense.

CHAIRMAN ROBERTI: How did you vote?

MR. ATAMIAN: I voted yes after long deliberations on the homosexual part, Section 19. We did have a few amendments to it to include dignity for all individuals, that was one of the amendments proposed that was included in the final draft. Basically the rest stayed pretty much the same except, I think, on the AIDS limits, they recommended that it start in the 7th grade through the junior high school levels, and then more comprehensive study take place in the high schools.

CHAIRMAN ROBERTI: The bottom grade was 7th grade?

MR. ATAMIAN: Uh-huh. But they also said that local needs will need to be accommodated, so leaving it open.

CHAIRMAN ROBERTI: Any further questions of Mr. Atamian?

Senator Craven.

SENATOR CRAVEN: Do you support the concept of sex education programs in the public school system?

MR. ATAMIAN: I really do.

I just came from a student conference today, and it seems like the overwhelming majority of the students, they really -- especially with AIDS and all these diseases coming out -- it's starting to become a big fear. And I think that they want more sex education, and they fear the consequences of ignorance.

Now, I think if we are going to teach sex education, that we really do need to have qualified teachers and make sure that we have strong teacher credentialing so that we have the right teachers prepared to do that job.

SENATOR CRAVEN: Would these be people who are sex educators?

MR. ATAMIAN: I think you'd see most of them coming out of the health -- health area, health teachers.

SENATOR CRAVEN: As opposed to a gym teacher?

MR. ATAMIAN: Yeah, hopefully it's not a gym teacher unless they have a credential in that area. But I would see it more as either a health teacher or maybe a life science/biology teacher.

SENATOR CRAVEN: Yes.

Have you, during the course of your high school curricula, been a student in a sex education class?

MR. ATAMIAN: Not a specific sex education class, no. As far as a required semester health class, yes, and that topic's addressed in the standards of the curriculum.

SENATOR CRAVEN: It addressed human relationships.

MR. ATAMIAN: Right.

SENATOR CRAVEN: Let me just ask you, man-to-man.

CHAIRMAN ROBERTI: With a lot of other people listening.

(Laughter.)

SENATOR CRAVEN: Did you learn anything in that class you didn't know before you began the class?

MR. ATAMIAN: Not really. Maybe --

SENATOR CRAVEN: You've answered my question. That's good enough.

That's a rather interesting thought. You know, some of the purists might be surprised to find out that there are a few of us of age who managed to get through school, and college, and graduate school, and other things, without ever having been exposed to any such teaching. Our teachers probably were people who were our peers. Where they got the information, who knows?

But I really never found anything that I had heard to really be wrong, but I never had any formal education along those lines.

Sometimes I have the feeling when you tell people all about things sexual, that you intrigue them to engage in that type of activity. This is presuming, of course, that they're single people.

Do you think that that's a danger at all?

MR. ATAMIAN: Well, I think that maybe in the classes, maybe some of the things that I wasn't aware of, they explain a lot of preventive measures.

SENATOR CRAVEN: Yes. Just stay right on that point there.

So they teach you preventive measures?

MR. ATAMIAN: Right.

SENATOR CRAVEN: So, we know of course what they're teaching you to prevent; don't we?

MR. ATAMIAN: Right.

SENATOR CRAVEN: Are we at the same time teaching them to engage in that type of activity by virtue of telling them how you can do it without have to pay the consequence?

MR. ATAMIAN: I don't really believe that they're really condoning it as well, because they do give the harmful --

SENATOR CRAVEN: I don't know that they necessarily condone it. I wouldn't want to give you that impression.

But it goes back to the question or the statement that I made relative to the intrigue of the whole milieu. And that's an interesting concept as far as I'm concerned.

I have some constituents, I might add, who are very much opposed to the extension or the broadening of the scope in the sex education field. And yet I have some people that I represent who think it's a very, very good idea.

But because you're of the age of the persons that we are really trying to get to, and to give them a certain intelligent view of the whole thing, that's why I'm interested in just what you have to say.

There's not necessarily in this, Mr. Atamian, any right or wrong. It's just what you think. And that's why I'm interested in what you state.

MR. ATAMIAN: I definitely agree with you that what's acceptable to one community isn't going to be acceptable to another community.

SENATOR CRAVEN: True, yes.

MR. ATAMIAN: I think the Board had to take that into consideration in going over guidelines like this to leave primary responsibility upon the district level.

For instance, you know, what is acceptable in San Francisco may not be the same for some rural town in the Central Valley.

SENATOR CRAVEN: Or what sells in Fresno may die aborning in Firebaugh, right?

MR. ATAMIAN: Right.

SENATOR CRAVEN: Thank you very much.

MR. ATAMIAN: Thank you.

CHAIRMAN ROBERTI: Thank you.

Senator Mello.

SENATOR MELLO: Well, I think the question brought up about AIDS education, sex education are important, but I'm really more concerned about the entire achievement level in our schools, and the dropout problem, and how we can regain and maintain excellence in education at a time when we're having so many difficulties.

I would ask you as a student what contribution do you think you can make to helping to improve the quality of education in California?

MR. ATAMIAN: As far as affecting the dropout rate?

SENATOR MELLO: No, as far as the achievement level and the quality of our education? Or do you think we're doing a great job now?

MR. ATAMIAN: I think basically we're on the right track. Sometimes I wonder whether, you know, math -- obviously everybody isn't going to be a math genius, or science or English. I think that's basically the direction we're headed towards now, is more the foundation, you know, building upon reading, math and arithmetic -- I mean writing.

SENATOR MELLO: You mean the basics?

MR. ATAMIAN: Uh-huh, the basics.

As far as -- I don't know. Some people -- everybody is not the college-bound student, I guess. But I think everybody does need some sort of foundation, like you're saying, to build upon. And I think we are going towards that direction in the State right now.

SENATOR MELLO: But don't you agree if we just emphasize the Three Rs or the basics, we're not going to provide the kind of relevant education to many that are the under-achievers, those who need remedial reading and other types of assistance, and then we have the gifted and talented students in another category, that the Three Rs and the basics are --

MR. ATAMIAN: Not enough.

SENATOR MELLO: -- not enough, and they bore them really in the classroom.

So what do we do about the full range of education that's really needed?

MR. ATAMIAN: Well, I really don't have any particular solution.

Again, it's tough to develop different curriculums at local levels because not everybody has, like, A.P. classes and Honors classes, or has a variety of voc. ed. opportunities as well. So, I mean, I don't know whether that's because of funding or what, but --

SENATOR MELLO: Do you think from your experience, though, as a student, you're going to be able to be a voice for lower class size if that's desirable, or adding to the basics and trying to provide a more flexible type of education?

MR. ATAMIAN: Oh, definitely. I think as a Member of the Board, I think all the Members will agree with that and have been aiming to achieve that goal.

SENATOR MELLO: Thank you.

MR. ATAMIAN: Thank you.

SENATOR CRAVEN: Are there further questions?

CHAIRMAN ROBERTI: No.

SENATOR CRAVEN: If that be the case, I would like to move the confirmation of Rodney S. Atamian as a Member of the State Board of Education.

CHAIRMAN ROBERTI: Senator Craven moves Mr. Atamian's confirmation be recommended to the Floor.

Any discussion or debate? Is there any opposition?

Seeing none, Secretary will call the roll.

SECRETARY WEBB: Senator Doolittle. Senator Mello.

SENATOR MELLO: Aye.

SECRETARY WEBB: Senator Petris. Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is three to nothing; the confirmation is recommended to the Floor.

Congratulations.

MR. ATAMIAN: Thank you very much.

SENATOR CRAVEN: Thank you very much. You're a very articulate young man.

MR. ATAMIAN: Thank you.

(Thereupon this portion of the Senate Rules Committee Hearing was terminated at approximately 2:35 P.M.)

--oo0oo--

CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

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SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR JOHN DOOLITTLE

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

MEMBERS ABSENT

NONE

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Appointments

ALSO PRESENT

MARTIN B. DYER, Chief
Bureau of Automotive Repair

MARGIE HANDLEY, Member
California Transportation Commission

WILLIAM BAGLEY, Chairman
California Transportation Commission

NANCY LEON, Los Angeles Chapter
Women's Transportation Seminar

BOB WHITNEY, Resident
Willits

I N D E X

	Page
Proceedings	1
Governor's Appointees:	
MARTIN B. DYER, Chief Bureau of Automotive Repairs	1
Motion	2
Committee Action	2
MARGIE HANDLEY, Member California Transportation Commission	3
Questions by CHAIRMAN ROBERTI re:	
Access to Inside Information	4
Mayor Bashore's Voting Record	5
Statement by CHAIRMAN ROBERTI re:	
Investigations into Conflicts	6
Witnesses in Support:	
WILLIAM BAGLEY, Chairman California Transportation Commission	6
Questions by CHAIRMAN ROBERTI re:	
Knowledge of Project Locations	9
Agenda Setting	10
Response by MR. BAGLEY	10
Response by MS. HANDLEY	10
NANCY LEON, Los Angeles Chapter Women's Transportation Seminar	11
Witnesses in Opposition:	
BOB WHITNEY, Resident City of Willits	13
Questions by SENATOR CRAVEN re:	
Document Referenced in Testimony	15
Type of Application Document	16

I N D E X (Continued)

	Page
Bearing of Document on Issue	16
Applicability of Impropriety	18
Open Space Designation	18
Vote on Annexation	19
Importance of Bashore's Vote	19
Investigative Results	20
Representation of Commission	22
Questions by SENATOR PETRIS re:	
Occupation	23
Commendation	23
Motion	23
Questions by SENATOR PETRIS re:	
Mayor Bashore's Involvement	24
Mayor's Employment	26
Mayor's Votes in 1984	27
Mayor's Votes in 1986	27
November 12 Vote	28
Disclosure of Mayor's Employment	28
December '86 Vote	29
State-leased Gravel Quarry	30
Exclusive Rights to Quarry	31
CALTRANS Agreement re Quarry	32
Quarry Access	33
Culvert Problems on Highway 101	33
Culvert Corrections	35
Statement by CHAIRMAN ROBERTI re Vote	36
Committee Action	37

I N D E X (Continued)

	Page
Termination of Proceedings	37
Certificate of Reporter	38

P R O C E E D I N G S

--ooOoo--

CHAIRMAN ROBERTI: Governor's Appointees appearing today, Martin B. Dyer, Chief of the Bureau of Automotive Repairs.

MR. DYER: Senator, how are you?

CHAIRMAN ROBERTI: Very good.

We all know you. Tell us why you feel you're qualified.

MR. DYER: Oh, I'll be brief, if that will suffice.

Good afternoon, Senator and Members.

I was appointed Deputy Chief of the Bureau of Automotive Repairs in December of 1983 and spent approximately two and a half years shepherding smog check through the opening stages of that program. Those were the stages when we feared that the Capitol might be surrounded and there might be a great deal of trouble. I think we had a successful record doing that.

Since May 1 of last year I have been the acting Chief, and since August 1, pending Senate confirmation, I have been the Chief of the Bureau of Automotive Repairs.

We have been moving very, very aggressively to make sure that the environmental benefits of the smog check program are all that we can get without adding any additional unreasonable burdens to the motoring public. I'm excited about what we have been accomplishing in that area. The program is a successful one, and I think it that it can be far more successful with the kind of leadership that I'd like to provide.

On the other side of the Bureau's responsibilities, we license -- we actually register 40,000 repair facilities in this

State and try to help keep those facilities on the straight and narrow in terms of communicating with customers purchasing automotive repair. We try to mediate those complaints successfully. Those are the responsibilities that I think are near and dear to the hearts of almost all Californians, the ones that I'm deeply committed to, and ones that we are meeting successfully.

I would ask for your aye vote.

CHAIRMAN ROBERTI: Is there any further discussion or debate? Any opposition in the audience?

SENATOR CRAVEN: Move the confirmation of Mr. Dyer.

CHAIRMAN ROBERTI: Senator Craven moves Mr. Dyer's confirmation be recommended to the Floor.

Hearing no questions, Secretary will call the roll.

SECRETARY WEBB: Senator Doolittle.

SENATOR DOOLITTLE: Aye.

SECRETARY WEBB: Senator Mello. Senator Petris. Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is three to nothing; confirmation is recommended to the Floor.

MR. DYER: Thanks, Senators.

CHAIRMAN ROBERTI: Congratulations.

The next is Ms. Margie Handley, Member of the California Transportation Commission.

Ms. Handley, we'll ask you what we ask all the Governor's Appointees, and that is why you feel you're qualified to assume this position?

MS. HANDLEY: Good afternoon, Senators.

I'm qualified to be a Member of the California Transportation Commission because as a business woman for 17 years and in the construction business for the past four years, I can bring considerable knowledge to my responsibilities as a Commissioner for programming cost effective projects and monitoring the implementation of the State's transportation program.

As a native Californian, I clearly recognize that transportation is a vital link to our economy. A good transportation system is not a luxury item; it is essential to public safety, convenience and economic prosperity. People need to get to work, and products need to get to market.

I have been and will continue to be a working Commissioner responsive to the needs of people. I have visited all 11 CALTRANS districts throughout the State, and I'm familiar with their problems and with their needs. I have toured and ridden most of the major transit systems in the State. I average two days a week on Commission business.

While I recognize that I represent the whole State, I also especially recognize that rural counties need a voice. I will be that voice. I offer a woman's viewpoint, and I also bring geographic balance to the Commission.

I am very aware of the time and energy that it takes to be an informed Commissioner, and I am quite willing to make the commitment to serve as a Member of the California Transportation Commission.

There have been allegations directed to my role as Commissioner and my business activities. These have been thoroughly investigated by the Fair Political Practices Commission and your own Auditor General, and both have found no instances of improper activities.

Safeguards are in place through public records and bidding procedures to protect the public and assure fairness. I have observed these procedures and have taken all steps necessary to remove any potential conflicts. And I pledge to you to continue to do so.

I sincerely believe that my own business experience is an asset to my role and responsibilities as a Commissioner. Thus I believe I possess the qualifications to be an effective Commissioner.

CHAIRMAN ROBERTI: Thank you very much, Ms. Handley.

I think maybe if you could speak to some unfortunate allegations that have been made, it might be very, very helpful. There have been allegations made that you've had access to information about road projects before they were funded, and that CALTRANS has done a great deal of business with your firm.

Could you speak to that for us?

MS. HANDLEY: I'm not aware of any inside information that could be received by myself.

The State Transportation Improvement Plan is done five years in advance. All of the information is public. The Commission has no public meetings -- I mean no private meetings. All of the information that I received is public record.

The agendas are mailed out on minor projects to 700 people at the same day that my agenda is mailed out. Anyone can request an agenda.

All of the information that I've received I knew about when I went into business in 1983.

CHAIRMAN ROBERTI: There's also been some concern that Mr. Bashore, Mayor of Willits, has been an employee of Hot Rocks from time to time for several years, and he's voted on City resolutions and ordinances affecting your interests while he was on your payroll. It's alleged that some of these votes appear to violate State law. I do not know.

What we do know, however, is that Mr. Handley's salary was paid --

MS. HANDLEY: Mr. Who's?

CHAIRMAN ROBERTI: Excuse me, Mayor Bashore's salary was being paid by Ms. Handley or her firm, Hot Rocks.

Do you think that gives the appearance of conflict or any problem that would cause the public some distress?

MS. HANDLEY: It's unclear to me why this matter has any bearing on my responsibilities as a Commissioner.

Whatever action Wayne Bashore may or may not have taken should be answered by Mr. Bashore. I would not in any way attempt to influence his decisions.

CHAIRMAN ROBERTI: Are there any other questions of Ms. Handley?

I might note that we did ask for the Attorney General to look into any potentiality of conflicts on Ms. Handley's part, and we have received a report from the FPPC -- excuse me, the Auditor General, which indicates from his point of view that there is no conflict and also from the FPPC that there is no conflict. I think we should state that since we requested those reports.

Is there opposition in the audience to Ms. Handley? Please come forward.

Oh, excuse me, I'm sorry. Let's ask for support first. Assemblyman Bagley and yes, you may come forward also.

MR. BAGLEY: I should think it would be an appropriate time.

SENATOR MELLO: It's the first time you've sat down.

MR. BAGLEY: It's the first time you've let me, Henry.

(Laughter.)

MR. BAGLEY: You see, this time I'm serious. Sometimes I come up here as an old friend. Today I come up as Chairman of the California Transportation Commission, and I want to speak as Chairman for a moment.

Marge Handley has been Commissioner, as you know, for a year, the year allowed prior to her confirmation. She's been a good Commissioner. She's been a fine Commissioner. She works much harder than I do. I have practiced law. I didn't steal in public office, so therefore I have to continue my practice.

Marge was never in public office and has her own business, and has the ability to travel the state. She's been in every blessed district all over the state looking at problems, researching. When she comes to meetings she is more informed, I mean this literally, more informed than I.

The process, and Marge Handley just touched upon it briefly, of the Commission is such that we are now budgeting, assuming we have some money, five years out. Anything in the process now was budgeted five, four, three, two years ago. We're now budgeting for 1992. And the veto was overridden, so we've got about $180 million of new projects that we can budget for 1992. The "new" meaning State, non-interstate, projects.

The primary expenditure that we've been making has been driven by the federal program, interstate completion. When you read about these billions of dollars that we budget, that's a little phony. We don't budget them. The federal government drives the program, and we simply administerially approve interstate completions statewide.

Therefore, any allegation that Mrs. Handley has had a part in putting some project ahead of some other, number one, isf virtually impossible. And number two, is absolutely untrue, and I will testify to that if you were to give me a couple of oaths; I would assume them when I so state under penalty of perjury right here.

She has been absolutely clean in every regard. I wouldn't say that, sir, were it not true. So that's point number one.

And then quickly point number two, I speak now, if you will, as a colleague or as a former colleague who cares as much, I hope, as you do about your own process. And I hate to see this process impinged. I hate to see people trying cases that aren't before this forum, trying to try those cases before this forum.

Willits is a town of 4,000 people. I have asked Marge specifically when did the Councilman-Mayor work for you. She can speak for herself, but as I recall her answer, he worked in 1983 or '84, left the job, was unemployed for three months. So, if she was trying to be nice to him to get a favor, she wouldn't have left him unemployed. I have cross-examined her on this.

Later on she had a couple of little one-day jobs to build some forms. The Mayor or Councilman happens to be a carpenter. He built some forms, and the bill was a hundred and some odd dollars.

These were minor matters. And even in regard to those, I spoke last Friday to the Director of Enforcement for the FPPC. He said even if some of the allegations were true, they wouldn't be a violation of law, and the others we found no evidence thereof. He ended up saying to me, "We have completely cleared Ms. Handley and her connection with us," quote-unquote, and I use his words, "is history."

So, I am speaking on behalf of her as a good Commissioner, as Chairman, and I'm also pointing out that you really, you know this better than I so I'll cease my gratuitous advice, you really shouldn't try a Willits annexation case in the Senate Rules Committee.

Thank you, sir.

CHAIRMAN ROBERTI: Fine.

Another point is that the allegation -- and I'm using the word "allegation" advisedly, but I think we do have to pursue this a little bit -- is that you are able to find out where there's going to be a project sooner than others, and then you're able to, because being the lowest bidder is very important in any contract that CALTRANS lets, you're able to find suppliers in and around the area of the contract so that that reduces your transportation costs and allows you, therefore, to be a lower bidder than a competing contractor.

I guess the appropriate question is: Have you ever done that?

MS. HANDLEY: The way the transportation plan works, CALTRANS presents their projects to the Commission. The regional agencies present their plans to the Commission. And many times those plans are lateral.

After they've been presented to us, normally they've already been in the paper. In fact, this is a good case in point because the STIP process, we're in a STIP process right now. And I read about the Willits bypass being put on the long lead-time list in the Willits News before I had received my briefing book.

So, by the time they come to the Commission, it's already been in the paper. Even -- there's no way to know. There's no way to know what's going to -- to come up at the Commission meeting ahead of time. I don't think anyone knows in advance what's going to go on that list.

CHAIRMAN ROBERTI: Who sets the agenda?

MR. BAGLEY: The agenda is set jointly by our staff and CALTRANS, mostly by CALTRANS because they have the projects in their pipeline and agenda items as they flow. But it's not simply a discretionary setting.

The process by statute lasts a year. The regions -- first of all, CALTRANS comes up with what they call the P-STIP, preliminary STIP. It's a two-foot thick book. That's again for 1992, '93, '94. The regions by statute come up with the R-STIP, regional STIP. And as Ms. Handley said, most of the time the projects are parallel.

We actually sit as sort of a quasi-legislative body and make a decision between -- and this is the only choice we have -- doing what CALTRANS is proposing and what the regions propose. So, we're sort of the arbiters between the regions, and the regions are set up by statute, Metropolitan Transportation Commissions around the state. Those are the major projects.

On maintenance and things like that under, I think, it's 250,000 we never see it. These are just -- CALTRANS has the right to go out and fill potholes whenever needed.

The records, Senator, are all public records under, if you will, the 1968 Bagley Public Records Act. Anybody can go in and see what is in the pipeline. I've never tried.

MS. HANDLEY: Even after the project is put on the STIP, it's three to five years before that project ever becomes reality. So, it's really financially impossible to go out and tie up every gravel bar or every source of material that's in the area.

When I went into business there was a tremendous amount of work programs for the Willis, Cloverdale, Lake County area that were in the pipeline already. That was one of the reasons I went into business because they had not been building highways for a long time and now the time had come when we were going to start building highways.

So I went in because I saw that these projects were going to happen. And I am still in the process of obtaining gravel sources right now for projects that are maybe one or two years down the line, but they have been in the plan for -- some as many as eight years.

CHAIRMAN ROBERTI: Thank you.

Is there anyone else in support? Yes, please come forward.

MS. LEON: Good afternoon. My name is Nancy Leon. I'm here today representing the Los Angeles Chapter of the Women's Transportation Seminar.

Our chapter is one of 22 nationwide with 2,500 members in the transportation field. The Los Angeles Chapter has members in all transportation modes from aviation, transit, highways, trucking and rail. Our group is a very diverse one from bus drivers to planners. I myself am a senior engineer at the Jet Propulsion Laboratory in Pasadena.

I'm here today to speak on behalf of the confirmation of Margie Handley to the California Transportation Commission.

Shortly after her appointment to the Commission last year, Margie traveled to Los Angeles and spoke to the WTS Los

Angeles Chapter. If you check her voting record, you'll find that she has been very supportive of projects in the Los Angeles area, including Metro Rail.

When the Legislature created the California Transportation Commission, it took great pains to ensure that both the urban and the rural areas of this state were represented. Margie is the only member of the current Commission, all of whom have been appointed by Governor Deukmejian, who represents the rural areas of California. Yet, as I mentioned, she understands the needs of our urban areas, and she is the only woman on the Commission.

Under the previous administration, there were three women serving simultaneously on the Commission: one in the aviation field, one handicapped; three out of seven appointees.

Margie is uniquely qualified to be a member of the California Transportation Commission. She is a working woman from a rural area in a nontraditional role in the transportation industry. Margie's appointment has begun to bring some balance to the Commission by providing an understanding and a point of view which would not otherwise be represented.

WTS Los Angeles believes that not only should Margie Handley's appointment be confirmed by the State Senate, but that the Senate should send a clear signal to the Governor that the composition of the Commission must reflect all of the people who live in this state: men, women, minorities, transit users, people who live in cities, and people who live in rural areas.

We also believe that the current vacancy on the Commission should be filled with another woman.

We urge your affirmative vote to let the Governor know that this appointment was a step in the right direction.

Thank you for your consideration.

CHAIRMAN ROBERTI: Thank you very much, Ms. Leon.

SENATOR CRAVEN: Ms. Leon, are offering yourself for candidacy?

(Laughter.)

CHAIRMAN ROBERTI: She'll take it.

MR. BAGLEY: She's got to interview with me, Bill.

SENATOR CRAVEN: She's eminently qualified, I'm sure.

MS. LEON: Thank you, Senator.

CHAIRMAN ROBERTI: Is there opposition in the audience? Please come forward.

Please state your name.

MR. WHITNEY: Bob Whitney. I'm a resident of Willits. I'm here to speak on the substance of the issues in regards to the allegations that Margie Handley may have conflicts of interest with respect to her employment of the Mayor of Willits, Wayne Bashore.

I respect the rights of women, people in the rural counties to be represented, and I think that's a fine goal. I think that she has -- Mrs. Handley has certainly demonstrated her dedication to the work of the Transportation Commission over the last year.

However, since there's so few people representing the State of California on the Transportation Commission, it seems like you should pick individuals with the highest caliber and don't associate themselves with private financial dealings that have a clear ethical conflict, if not in the law then certainly in terms of common sense.

One of the documents I'd like to present to you today, and I know that Margie has attempted to disassociate herself from her employee, Wayne Bashore, in terms of a conflict of interest, but I brought a document today that I have not presented in the past.

By the way, I'm a full-time teacher. I don't have time to race around and do these types of investigations. I took the day off from school today on my own time, foregoing my meager salary to come down here. So it's not like I have all the time in the world.

I just found out this information last Thursday.

CHAIRMAN ROBERTI: Sergeant, bring it up to us.

MR. WHITNEY: What it shows, it shows that in, I believe the date on there is '83, '84, if you'll look at the date. I don't have a copy myself. That's my only copy.

CHAIRMAN ROBERTI: It says February 20th, 1984.

MR. WHITNEY: February 20th of 1984. At that time Mr. Bashore had been working for Mrs. Handley for quite some time. He was a full-time employee of Hot Rocks. It wasn't a temporary position. He wasn't building forms for her.

He was the primary agent of Hot Rocks in developing the applications for her business. There are dozens of applications, or half a dozen applications, in the Mendocino records. I've submitted a number of them to you. This is one.

If you'll notice that on that document Mrs. Handley's name appears twice; her signature appears twice. The first time the signature is there is because she is a landowner of the project in question. The second time she signed it as president not of Hot Rocks; you'll notice it's president of Harrah Industries. That's very important to remember in my later testimony, because it points out a direct conflict of interest as Mr. Bashore's signature is there as her employee, is advocating projects on her behalf.

The reason I'm bringing this up, I might add, is that I think it's fundamentally important to question the integrity of the individual that's been appointed to the Transportation Commission --

CHAIRMAN ROBERTI: Senator Craven has a question.

SENATOR CRAVEN: Mr. Whitney, if I may, would you tell us what the document refers to?

MR. WHITNEY: The document is an application to the Mendocino County Planning Department for a use permit for a gravel operation. Mr. Bashore was acting as Margie Handley's agent.

One of the interesting things on the document that I found is that the address is the same for all the parties: 42 Madrone Street. It's the address given for Hot Rocks; it's the

address given for Mr. Bashore; it's the address given for the landowners Robert Harrah, Margie Handley and I believe it's Margie's sister.

SENATOR CRAVEN: This is an application for a conditional or special use permit?

MR. WHITNEY: A special use permit for a gravel -- I believe it's a gravel operation.

SENATOR CRAVEN: All right, I understand.

Now, is it your contention that, of itself, there's something wrong with that application?

MR. WHITNEY: It's my contention that that proves that Harrah Industries, Hot Rocks, Wayne Bashore, and Margie Handley worked together for the development of their mutual financial private interests, and Mr. Bashore because of that was in a conflict on at least five votes as representing the City of Willits.

SENATOR CRAVEN: I'm a little confused here, Mr. Whitney.

This is an application that was filed in 1984, February of 1984, which was precedent to her service on the Commission by several years.

MR. WHITNEY: That is correct.

SENATOR CRAVEN: What real bearing does that have on the issue before us?

MR. WHITNEY: The bearing is that after her appointment in April, 1986, and before that date, Mrs. Handley continued to associate herself with the employment of Mr. Bashore. He voted

on October 2nd, 1986 -- or, October 22nd, excuse me, of 1986 -- my understanding, for a resolution in favor of a project that she -- a major project, 260 acres of land that was zoned industrial park. And at that time he was employed as an agent for Mrs. Handley.

On November 12th, 1986, he's the Mayor and also Councilman Wayne Bashore voted again for a resolution of the southeast annexation while he was an agent for Mrs. Handley, while he was employed by her, and negotiated -- voted for a negotiated exchange of property tax revenues on the same project December 10th, 1986.

I have submitted a document that demonstrates the -- on December 18th, at least that date, Margie Handley signed an application to the County Planning Commission that Mr. Bashore was an agent for Hot Rocks.

My understanding is that he has admitted to the Senate investigators that he had started as early as October, 1986 in her employ. That's two votes or three votes in the resolution for the City of Willits on property -- that affects property that Margie Handley owned.

SENATOR CRAVEN: Well, let's stipulate to the correctness of your document and the actions involved with the nominees in the document.

But I don't construe that to be anything which Mrs. Handley is involved with. If there is, as you presumably are contending, a degree of impropriety in that there may be a conflict of interest, I should think that that would be most

appropriately laid upon the shoulders of the gentleman as opposed to Ms. Handley. He was in fact the elected official, and I would presume it would be his judgement to make a disclosure of that fact, or maybe he felt it was common knowledge. I don't know the circumstances surrounding that.

But I would think that that's something that would be more applicable to be critical of him as opposed to her.

MR. WHITNEY: The hearing today is -- of course, we're not trying Mr. Bashore in absentia. The hearing today is the confirmation hearing of a very important position for the public trust.

The project in question that Mrs. Handley purchased the 260 acres with her father in 1980-81 period, it was rezoned -- it was in '67 designated as the alignment for the Willits bypass to go through that property. It was formerly zoned agricultural property and annexed into the City this last year and was rezoned industrial park.

The intent and the public information presented to the public was that the area in which the highway was to go through was to be zoned open space. I presented evidence to the Senate Rules Committee that the land has actually been zoned industrial park, not open space.

SENATOR CRAVEN: First of all tell me, Mr. Whitney, where does the open space designation come from? I don't know that I understood that.

MR. WHITNEY: The open space designation was originally approved by the City Planning Commission, and it was sent to the

City Council. The City Council approved it in February of last year. It went back before a hearing again to the City Council on October 15th, 1986, and at that stage it was changed. The zoning was changed from a prezoning of open space to a prezoning of industrial park.

It's the land that the City has supposedly set aside for the Willits bypass. And that vote on October 22nd, 1986, Mr. Bashore voted for the approval of the southeast annexation project with that conflicting, I believe, conflicting position.

SENATOR CRAVEN: Could you tell me, Mr. Whitney, what the vote was?

MR. WHITNEY: What the vote was?

SENATOR CRAVEN: Yes.

MR. WHITNEY: It was an unanimous vote.

SENATOR CRAVEN: Unanimous vote.

MR. WHITNEY: Yeah.

SENATOR CRAVEN: So whether the gentleman, whose name escapes me for the moment --

MR. WHITNEY: Bashore.

SENATOR CRAVEN: Bashore, whether he voted for it or not, it still would have carried without his vote; is that right?

MR. WHITNEY: I believe in answer to your question, I believe that would not be correct. Mr. Bashore is a very dominant Mayor. He's actively involved in the City's day-to-day business, and he's very effective. Almost 20 years with the County Planning Department.

CHAIRMAN ROBERTI: Well, mayors and chairmen, just like the one you're facing there, are very dominant figures regardless of what the venue may be. There's no question about that. When David Roberti says something, I listen. I may not always vote with him, however.

CHAIRMAN ROBERTI: That's true.

(Laughter.)

SENATOR CRAVEN: I have a feeling that the councilmanic persons would probably feel that same way.

And you recognize, I'm sure, by virtue of your own experience, the City Council, regardless of the makeup of that Council, is free to make changes in their deliberations, past deliberations, and you can change a general plan three times annually. So there's nothing illegitimate about that.

I don't mean to shortstop you on this, which you probably think I'm trying to do, but my feeling is that, one, the matter has been brought before the Auditor General, which is a very comprehensive review, and then when we talk about conflicts or political activity involving conflicts, the Fair Political Practices Commission has also reviewed it. Both of them have come to the same conclusion, and that is that there is in fact no problem.

Now, do you recognize that?

MR. WHITNEY: I recognize they didn't have this information, and they did not make their judgements on the information I'm presenting today. I mailed it on Sunday. The Senate Rules Committee investigators received it, I believe, Tuesday morning of this week.

SENATOR CRAVEN: The information which you have recited is not necessarily new to me, because I've heard that before your presence here today. So it must be somewhat less than secret if I have heard it. And I heard of it at least, I'll say, close to a month ago, talking about the open space and annexation and the bypass. Those are the things that I'm referring to.

MR. WHITNEY: Well, what I'm referring to is the fact that her employee voted in favor of a project that directly benefitted her financial interests. It seems like she knew about it. She knew what he was doing. He did it on a number of occasions. It was certainly, like you say, no secret.

And I would think that if the rural interests of the State of California are to be adequately represented, there could be somebody that would be of better judgement of character, let's put it that way mildly.

The other thing is that it occurs to me, to jump onto just a little bit of a different track, it seems rather ironic that the area of Willits, Mendocino, Lake County, Sonoma County has a representative from that area that can't vote on projects. That seems a little ironic to have somebody purporting that they can represent the rural interests yet they can't vote on State transportation projects because there's a conflict of interest in the fact that she owns an asphalt and gravel operation.

SENATOR CRAVEN: Would you rather she vote on it and be in conflict?

MR. WHITNEY: No, I think there's probably dozens of great Republican people that would be more than happy to

represent the State on the Transportation Commission, and I think that they live in rural areas. And I believe that if this is the only person we can find, then the State of California hasn't looked very carefully.

SENATOR CRAVEN: I'm not going to try to second-guess the Governor. That would be rather foolhardy.

I think you have to recognize that the people who serve on the Commission represent San Ysidro as well as Lake County. And that's a long way, one to another, as you probably well know.

They're not necessarily, in my judgement, although I stand to be corrected, necessarily representative of specific areas. It's nice if you can have the kind of distribution that you could apply that principle to, and perhaps our Chairman as well as the Commissioner and the lady who testified from Los Angeles kind of referred to it that way, but I don't know that that's necessarily an ingredient for selection. It would be very, very nice, but I don't think we do it in sort of a district way.

MR. WHITNEY: Well, it's nice to know.

And I appreciate the openness and frankness of the Senate Rules Committee. It seems like the democratic process is still alive.

SENATOR CRAVEN: Did you have any fear about that?

MR. WHITNEY: Well, you never know.

(Laughter.)

CHAIRMAN ROBERTI: We're glad you were able to attend. We're only sorry you have to take a day off to do it. It's important to get input from the people in the State.

Senator Petris has some questions of you.

SENATOR PETRIS: Just briefly.

I understand you're a teacher. What do you teach?

MR. WHITNEY: I teach computer science.

SENATOR PETRIS: What level?

MR. WHITNEY: High school level.

SENATOR PETRIS: Well, I want to commend you. It takes an extraordinary person to give up a day's work to attend a public hearing, and it takes even more where there's a controversy involving a very prominent person in your community.

Regardless of how this thing goes, I think you're to be commended for doing that.

MR. WHITNEY: Thank you.

SENATOR PETRIS: I don't have any questions, Mr. Chairman. Thanks.

CHAIRMAN ROBERTI: Do you have any other questions? Seeing none, thank you, Mr. Whitney, for you testifying.

Is there any other opposition in the audience?

SENATOR CRAVEN: Move the appointment.

CHAIRMAN ROBERTI: Senator Craven moves the appointment of --

SENATOR PETRIS: Mr. Chairman.

CHAIRMAN ROBERTI: -- Ms. Handley, do pass to the Floor.

Senator Petris has a question, I take it.

SENATOR PETRIS: Well yes, to Ms. Handley. I imagine she'd like to respond to what's been said.

CHAIRMAN ROBERTI: I think maybe she should respond, and if you have questions, why don't you ask them first.

SENATOR PETRIS: I know a lot of this has been covered, so I don't want to go over anything twice.

CHAIRMAN ROBERTI: We'll let you know.

SENATOR PETRIS: The Mayor's thing has been covered. Have you commented on that before?

MS. HANDLEY: Yes, I did.

SENATOR PETRIS: Okay, well maybe there's no need to go into that again.

It's a common device in the American political scene to be very adept at lateraling. This is no reflection on you necessarily.

I think the original reason why the Committee on Ways and Means was created in the Congress and much later here in California, the underlying slogan there is: If there's something important you need to do, you can find ways to do it.

In this case it looks like somebody found a mayor to do a lot of things that were helpful to somebody else. And I don't think it's a good defense, although I think it's a good question that Senator Craven brought up; that's another jurisdiction, it's not ours, the City Council.

But since you're going to be in the goldfish bowl for a long time on this appointment, I think we're entitled to go into that.

Getting the benefit of what someone else does through that person's conflict is still tainted in my eyes. That's why I wanted to know if you'd gone into that.

If you want to amplify your prior answer, that's fine, you know, when you close, or now if you prefer.

MS. HANDLEY: Well, this issue is definitely a local issue.

Wayne Bashore is a very concerned mayor. He has been -- I think he's been Mayor for maybe eight years; I'm not positive. But he really cares about what happens to the city of Willits. He works hard. He gives a lot of his time.

He -- the City did an economic development study and discovered that they did not have enough industrial land. And the City Planner approached me. I had originally applied to have the land annexed in 1981. And then the City required an EIR, which I believe Wayne was on the Council then. And we decided we didn't want to spend the money to do an EIR. It just was -- I didn't have the energy to pursue this at the time. I was busy doing other things.

So, the City Planner approached me after they had done -- the City had done their economic development study and asked if we would be interested in -- in resubmitting our application for the annexation.

And I have a map with me if you'd care to look at it.

But the property in question is really the only place that Willits has to grow. We're on the railroad tracks; we're at the south end of town. These people are trying to say that there should be no development west of -- or east of the tracks. There's probably 17, maybe 20, businesses east of the tracks. But it's the only place that there really is to grow.

My husband and I happen to own the property on the east side of the tracks. My father owns the property on the west side. He really doesn't want to develop his property, but in order for us to bring this whole piece of property into the annexation process, we needed to bring it all in so it didn't leave a hole.

I -- there's been 12 public hearings, by the way, over the last, I think, six years. We were sued by this group, by Mr. Whitney's group. We counter sued and won. We were awarded sanctions. We even agreed to another public hearing so there would be no question. It's definitely a piece of property that the City needs for industrial development.

It's a 25-year project. There are 80 mitigation measures attached to the development of this project, 80. So nobody's going to make a fortune, whoever develops it. Nobody's going to make any money on the project.

SENATOR PETRIS: Let me ask you, and maybe I can shorten this for you.

I'm not disturbed by ownership of property. You're to be commended for that. We all like to succeed in life and acquire property and develope it and so forth.

The question I had in mind was some of the things he covered and which had come to my attention previously, and that is the role of the Mayor during some of the votes.

Now, was it common knowledge up there that part of that time he worked for your company?

MS. HANDLEY: Wayne was employed full-time by me in 1983 and 1984.

SENATOR PETRIS: All right. Now during that time did he cast votes on these property issues that were significant?

MS. HANDLEY: Uh, I don't believe so. Let's see. I think the votes that he cast that are in question happened in 1985 and in 1986.

SENATOR PETRIS: How about '84?

MS. HANDLEY: There was --

SENATOR PETRIS: There's one in October of '84.

MS. HANDLEY: Yes, 10/3/84 he voted for a block grant for Advanced Manufacturing and Development Company. That has nothing to do with my company. My father did sell Advanced Manufacturing the land, but the land was sold on March 1st, 1985. So when he voted for this, they hadn't even purchased the land yet. They were just applying for money to try to relocate their business.

SENATOR PETRIS: How about in '86?

MS. HANDLEY: In '86, I really don't know if these allegations are true, whether Wayne has voted or whether he hasn't voted on these. I just learned of this yesterday myself.

But there were two public hearings in '85, and let's see, he may have voted on those too. I'm not sure. I really don't know what his voting record is.

SENATOR PETRIS: Well, maybe I can refresh your recollection.

On November 12, there was a vote on the annexation of the 200 acres that he was talking about earlier. During that month he was employed by your company.

MS. HANDLEY: Yes, he had just gone back to work for me, and I think it was a resolution to accept exchange of property tax. That's the information that I have. I do not know whether he voted or he didn't. That is an allegation.

SENATOR PETRIS: Well, my information is that he did, but you don't remember.

MS. HANDLEY: Okay, I have no -- well, I wasn't there so I don't know.

SENATOR PETRIS: I suppose, then, that means you wouldn't remember whether or not there was a disclosure at the time if he did vote that he was working for the company in some capacity.

MS. HANDLEY: I wasn't there so I just don't know.

SENATOR PETRIS: Well, your knowledge, I don't think is limited to your physical presence. I mean, I've never been to Moscow, but I know where it is. I hope I never get there.

MS. HANDLEY: I just learned about this yesterday, Senator, so I really -- I -- I have been very busy the last month, in fact actually the last six months, trying to run my business and trying to be a member of the Transportation Commission.

The annexation is really not my highest priority. I have an attorney that handles all the hearings. He goes and he represents me. I really just have stayed in the background

because it is not a priority in my life right now. So, I really haven't paid much attention to this.

SENATOR PETRIS: Then in December, let me ask you and maybe you don't remember. December, it's not much farther away than November, or less far, rather.

The proposal regarding property taxes, the switch from the county to the city on the annexed land. It's a procedural thing probably, and maybe not as significant as some of the other things that have been talked about.

According to our information, he was with your company from September of '86 through March, perhaps, of '87, continuously. So here's another vote that had some impact or effect.

Do you remember about the vote in December?

MS. HANDLEY: Wayne worked for -- he built some forms in 1986. The labor amounted to $120. He went back to work for me in -- well, his first check was in November, so he probably was working in October.

But, I don't know -- I just don't -- I didn't follow what he voted on. It's just nothing that we discussed, and I have no control over what he does.

SENATOR PETRIS: Let's go to a couple of other things.

I won't take very long, Mr. Chairman. I apologize for my tardiness.

This gravel quarry problem, now as I understand it, and you can correct me if I'm wrong, there's a quarry, and it's got a lot of whatever's in quarries.

MS. HANDLEY: Rocks. It's a rock mountain.

SENATOR PETRIS: And it's owned by the State, but the State --

MS. HANDLEY: No, it is not owned by the State. It is owned by Clear Lake Hotel and Resorts. The State has a lease on it.

SENATOR PETRIS: A lease, okay. It's leased by the State and the State has a policy of opening that use of the quarry for taking things out to bidders, private people who want to come in and use it. And they've had it, they've had the lease, for about 14 years. And there wasn't that much activity there; there wasn't an awful lot of activity. So, they agreed to give it up.

MS. HANDLEY: No, they did not give it up.

They still have a lease on that quarry that's valid until September, 1988.

I also have a lease to extract rock, but I had to honor CALTRANS' agreement in order to -- to sign the lease. I did this before I became a member of the Commission. It was not signed until May 1st, but the negotiations were all made and done before May 1st.

The reason that we didn't sign the agreement, we wanted to be sure we were going to be able to get a permit. So after it became clear that we could get a permit to do what we wanted to to there, then I signed the agreement.

But this was all decided long before I became a member of the Transportation Commission.

And I do want to open up an asphalt business in -- in Lake County. I have just purchased another asphalt plant. It's sitting there waiting for a permit. And that was a prime location, in my estimation, because it was on the east end of the lake. Clear Lake is a growth area. It has access to the geysers, and there were a lot of reasons that I wanted to go there.

There is no competition there, by the way.

SENATOR PETRIS: No competition?

MS. HANDLEY: Well, there will be now.

SENATOR PETRIS: I understood that your company got an exclusive right to use it.

MS. HANDLEY: Oh, for the quarry?

SENATOR PETRIS: Yes,

MS. HANDLEY: I don't have the contract in front of me.

SENATOR PETRIS: Let me be more direct. Here's the way it comes to me, and you can unscramble it if it's wrong.

The State's got this thing, and it's sitting on it for 14 years, and there isn't that much activity in the area so there isn't a lot of interest being focused on it. Okay?

At the end of the 14-year period, they give up or acquiesce in having your company come in and take over an exclusive right to have control of that quarry, at a time when all kinds of projects are starting to pop up and there's projected to be about $16 million worth in the next five years.

So, on the surface, it raises a suggestion of some pretty good timing there on the part of somebody who knew what

was going on and had the good sense to get in on it before the big avalanche of everybody else coming in. Now, that's how it looks.

MS. HANDLEY: Okay.

SENATOR PETRIS: Now, if that's wrong, I'd like you to tell me.

MS. HANDLEY: Okay, it's wrong, because the State still has the right -- if they have a job that they want to bid in that area, they have the right to come in and let another contractor go in there and make rock in my quarry. And they have that right until September. And if they want to sign up again for two more years, they could do that.

SENATOR PETRIS: Now what does that mean? Your agreement is --

MS. HANDLEY: Well, my agreement was with Mr. James that if -- that I had to honor CALTRANS' agreement because he had this agreement with them. And I said fine, they hardly ever use it.

The reason that CALTRANS gets quarries and obtains gravel sources is --

SENATOR PETRIS: Keeps the competition open.

MS. HANDLEY: That's right. Well, if there's no competition in the area, or if trucking is -- is an item, they tie up quarries and get permits so that when they bid jobs, they'll have a place that a contractor can go and the State doesn't have to pay this exorbitant freight to haul it in from somewhere else.

SENATOR PETRIS: So whoever is successful in getting a contract has access to the quarry?

MS. HANDLEY: Right, okay. And because someone is there now and there is a commercial source, it's unlikely that they would want that quarry, because now there's competition and there's a source. But they still have that right to come in and offer that pit at this point.

SENATOR PETRIS: Until '87.

MS. HANDLEY: Until '87, but I did not know I was going to be on the Transportation Commission when I made this agreement. I had not idea. I was trying to get appointed.

SENATOR PETRIS: When were you appointed?

MS. HANDLEY: April 22nd, 1986, and I signed the agreement May 1st, but we made the negotiations in January and February of '86.

SENATOR PETRIS: Officially you're not on it yet; are you?

MS. HANDLEY: No.

SENATOR PETRIS: I see.

One other problem. I think I can probably wind it up with that one unless other things pop up, and maybe this has been covered.

I also am curious about this culvert problem on Highway 101 and the Avenue of the Giants. Now the information I have is that Hot Rocks had the contract to replace some culverts, 70 of them, on the Avenue of the Giants on Highway 101 in late 1984. Now, that was a contract with CALTRANS.

When it was completed, the field engineer inspected it and found that in several respects the work was inadequate and ordered it done over again. After that field engineer made that determination, he found that the compaction of the ground at the culvert ends were also inadequate and ordered that to be done over again.

And there was a meeting with the senior inspector of CALTRANS who confirmed, apparently, what the lower level field engineer's findings were. And your dad, Mr. Harrah, is alleged to have said he would take care of it.

That means, I suppose, they'd go ahead and correct the problem.

The next day, the field engineer's recommendation was overridden by someone higher up in CALTRANS, and the decision was to simply charge the company $50 per culvert and let it go at that.

Now, our people tell us that if the Department had stuck to its original assessment of the problem, the cost to do both things that needed to be done would range from about 40-50,000 according to estimates from people that are supposed to know. So there is a substantial saving there by this reversal of the Department.

Now, I know that means it's your dad, it's not you, but it does involve Hot Rocks which is your company. And that again raises some eyebrows. It raises eyebrows in my case.

Can you shed some light on that?

MS. HANDLEY: Well, I -- I remember the situation. I was having a lot of problems in my business at that time. I didn't have the right people in the field.

I believe, if I can recollect -- I can't remember what the real reason was -- but I think that the telephone company had been in after we had been there, and there was some feeling that we would be able to -- to challenge the fact that we had not done them properly because the telephone company had come along after we had been there.

So I believe my husband -- I was not at this meeting, but my husband and Barney Rowland and Dan Morine and -- I don't know if my father was there or not. I know that they went up and had a meeting with CALTRANS and that it was resolved. And I think that it was resolved in the way that we would be docked so much per culvert and it would be signed off.

Now, I'm sure that that must be procedure for CALTRANS or they wouldn't have done it that way.

SENATOR PETRIS: Now, has anyone else been brought in to correct the work?

MS. HANDLEY: Uh, I don't know. I -- I can't answer that because I don't know.

SENATOR PETRIS: Do we have anybody here from CALTRANS who can tell us?

Thank you.

CHAIRMAN ROBERTI: Ms. Handley, you may rebut. This is rebuttal time if you choose to. I think you've answered a lot of questions.

MS. HANDLEY: I think that I would hope that you would vote for my confirmation, and I will try to do a very good job if I'm confirmed.

CHAIRMAN ROBERTI: Thank you very much.

Senator Craven has a motion before us.

Any discussion or debate on the motion? Secretary will call the roll.

SECRETARY WEBB: Senator Doolittle. Senator Mello.

SENATOR MELLO: Aye.

SECRETARY WEBB: Senator Petris.

SENATOR PETRIS: No.

SECRETARY WEBB: Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Senator Roberti.

CHAIRMAN ROBERTI: I'm going to vote aye with the observation that we have 10 days, I think, of the Easter Vacation. On the 20th, the appointment comes up, and I intend to have it taken up on the Floor at that time.

I think some of the problems that have surfaced are with the process and the lack of qualifications -- not qualifications, criteria of people who are appointed to the California Transportation Commission. I'm not saying this in derogation of Ms. Handley, but there really does not seem to be a sufficient conflict of interests code in the Commission as far as who is appointed.

Now, the fact of the matter is Ms. Handley is appointed, and I do not know of anything before me where she herself has

violated any law. Her presence gives a strong aura of conflict, but that is not necessarily a violation of the law or necessarily something that is specifically her fault.

I would hope that the Legislature, myself included, do something to sponsor some kind of legislation to tighten the criteria of appointments of people who are on.

However, we have 11 days. There are accusations which Mr. Whitney raised and I do not know if they were pursued by the FPPC or by the Auditor General, and I do think we should look into that.

But absent any finding in that area, I asked for the investigations and they did come back indicating that they could see no error on Ms. Handley's part. For that reason, I'm casting an aye vote.

The vote is three to one; confirmation is recommended to the Floor, do pass.

MS. HANDLEY: Thank you very much.

(Thereupon this portion of the Senate Rules Committee hearing was terminated at approximately 2:58 P.M.)

--oo0oo--

CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 9th day of April, 1987.

Evelyn Mizak
EVELYN MIZAK
Shorthand Reporter

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HEARING

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STATE OF CALIFORNIA

STATE CAPITOL

ROOM 113

SACRAMENTO, CALIFORNIA

WEDNESDAY, APRIL 22, 1987

1:40 P.M.

Reported by:

Evelyn Mizak
Shorthand Reporter

1 APPEARANCES

2 MEMBERS PRESENT

3 SENATOR DAVID ROBERTI, Chairman

4 SENATOR WILLIAM CRAVEN, Vice Chairman

5 SENATOR JOHN DOOLITTLE

6 SENATOR HENRY MELLO

7 SENATOR NICHOLAS PETRIS

8 MEMBERS ABSENT

9 NONE

10 STAFF PRESENT

11 CLIFF BERG, Executive Officer

12 PAT WEBB, Committee Secretary

13 RICK ROLLENS, Consultant on Bill Referrals

14 NANCY MICHEL, Consultant on Appointments

15 ALSO PRESENT

16 CAROLE A. HOOD, Chief Deputy Director,
17 Department of Social Services

18 W. DON MAUGHAN, Member and Chair
Water Resources Control Board

19 JOHN D. SMITH, Deputy Director
20 Office of Administrative Law

21

22

23

24

25

26

27

28

I N D E X

	Page
Proceedings	1
Governor's Appointees:	
CAROLE A. HOOD, Chief Deputy Director Department of Social Services	1
Question by CHAIRMAN ROBERTI re:	
Relationship to MR. QATSHA	3
Motion	4
Committee Action	4
Further Committee Action	29
W. DON MAUGHAN, Member and Chair Water Resources Control Board	5
Questions by SENATOR DOOLITTLE re:	
Boyden Barrier	6
Position on Delta Transfer Facility	6
Motion	7
Committee Action	8
JOHN D. SMITH, Deputy Director Office of Administrative Law	8
Questions by SENATOR DOOLITTLE re:	
Regulations Exempt from OAL Review	9
Basis for Nonreview of Regulations	9
Review of FPPC Regulations	9
Types of Review	10
Type of FPPC Regulation Review	10
Questions by SENATOR PETRIS re:	
Law Experience Background	10
Number of Staff Lawyers	11
Review of Regulations	12

I N D E X (Continued)

	Page
Final Determination	12
Mission of OAL	12
Public Involvement at OAL Level	13
Mailing List for OAL Publications	14
Sufficiency of Staff	14
AB 1013 Delay	15
Request for More Positions	15
Provision of Budget Information	17
Time-Frame to Determine Guideline Status	18
Agency Preperation of Regulations	19
Availability of Agency Attorneys	20
Participation of OAL Attorneys in Drafting Regulations	21
Attorney Expertise	22
APA Categories Involved	23
Complaints on Disapproved Regulations	23
BCDC Rejections	24
Communication Between OAL & Agencies	25
Period between Notice & Decision	26
Motion	28
Committee Action	29
Request to Rescind HOOD Vote	29
Termination of Proceedings	29
Certificate of Reporter	30

P R O C E E D I N G S

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CHAIRMAN ROBERTI: We'll now hear the Governor's Appointees appearing today, Carole A. Hood, Chief Deputy Director of the Department of Social Services..

Ms. Hood, we'll ask you what we ask all the Governor's Appointees, and that is why you feel you're qualified to assume this position?

MS. HOOD: Thank you.

I believe that I'm qualified really for three reasons. One is educational background; one is work experiences; and one is personal characteristics.

My educational background, I am a sociologist by training. I have both a bachelor's and a master's degree in sociology. My -- both of the degrees were obtained in the U.C. system in California.

My area of specialization was sociology of the family, which I think is really particularly relevant to Social Services, and certainly many of the programs that we deal with do deal with maintenance of the family and trying to support self sufficiency and independence for families.

The second area that qualifies me is work experience. I taught sociology in the U.C. system, and I did teach the sociology of the family for several -- for two or three years. Twelve years ago I joined the State of California and have been in State service since that time.

I began in State service as a graduate student assistant, and that was in the old Department of Health and also with the Department of Finance. During my time at the Department of Finance, I went from being a graduate student assistant to a budget analyst and did have the Social Services budget for about two years.

From there I went to the Department of Alcohol and Drug Programs, and I was there for about four and a half years. I began as the fiscal manager, moved through program positions, became the assistant division chief for the administration division, and finally deputy director. During the change in the administration, I was the interim director of the department.

Third, I spent almost two years as deputy director for the Department of Developmental Services. Fourth, I spent a year and a half as the deputy secretary for the Health and Welfare Agency, and that was in the area of program and fiscal affairs.

And finally, in my current job, I've held this position since June 17th of last year, and really prior to that time I had been in CEA positions for the past four years.

I do think that my career reflects a steady increase in responsibility and certainly a strong fiscal and administrative and management background.

In addition, I believe that I have the appropriate program knowledge and an understanding of the relationships between our program and other departments, especially in the Health and Welfare Agency.

Finally, the third area of personal characteristics, I do think that I have the right personal qualities for this job. Foremost, I think, is integrity. I also believe that I have the intellect for this job and certainly the ability and a very strong capability to work hard.

I do have a sincere commitment to insuring that these Social Services programs are administered as well as is possible and certainly that they meet their intended purpose.

CHAIRMAN ROBERTI: Thank you very much, Ms. Hood.

Are there any questions?

There's been some concern that's been registered that your husband is the former chief deputy, I guess, of the department, Mr. Qatsha?

MS. HOOD: That is not my husband.

CHAIRMAN ROBERTI: It isn't?

MS. HOOD: No.

CHAIRMAN ROBERTI: Very good; that takes care of that.

SENATOR CRAVEN: Was he ever?

MS. HOOD: He was never my husband.

(Laughter.)

MS. HOOD: I'm sure I can say he will never be my husband.

(Laughter.)

SENATOR CRAVEN: That's the point you have to make.

(Laughter.)

CHAIRMAN ROBERTI: Does he know the answer to the third question?

MS. HOOD: He does now, Senator.

(Laughter.)

CHAIRMAN ROBERTI: I have no questions other than that. Senator Craven.

SENATOR CRAVEN: I would like to move the confirmation of Ms. Hood.

CHAIRMAN ROBERTI: Senator Craven moves confirmation of Carole Hood to the Floor.

Any further questions? Is there any opposition in the audience?

Seeing none, the Secretary will call the roll.

SECRETARY WEBB: Senator Doolittle.

SENATOR DOOLITTLE: Aye.

SECRETARY WEBB: Senator Mello.

SENATOR MELLO: Aye.

SECRETARY WEBB: Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is five to nothing; confirmation is recommended to the Floor.

W. Don Maughan, Chairman and Member of the Water Resources Control Board.

We'll ask you the same question we ask all the Governor's Appointees; that is why you feel you're qualified to assume this position?

MR. MAUGHAN: Well, Mr. Chairman and Members of the Committee, I've spent over 40 years in water matters. I've been in just about all aspects of it. I did serve earlier on the State Water Board for nearly two terms during the '70s. I've been in an appointed office since 1970 in the federal government, in this State, and Arizona, and here again. I've made a full career in the water field.

I think my temperament very well satisfies the regulatory aspect of the job which is basically what the State Water Board does. I've had a lot of experience in holding hearings, and I think I'm a decisive individual that once we hear all the evidence, I'm very anxious to go ahead and dispose of the matter as quickly as I can.

I am a graduate civil engineer. I've worked a great deal in agriculture as well as other kinds of water programs.

So, I think that my record and experience and my temperament, and frankly even though I've been around a long time, I still have a lot of enthusiasm to see certain things done because I think our environmental concerns are very great in this State, and I think that they have to be balanced with some other factors. But I think we have found from the public in general and certainly from the Legislature itself that we are concerned about the future of the people who will live in this great State. And I think the only way to protect that, of course, is to take action now.

I'd be very glad to answer any questions.

CHAIRMAN ROBERTI: Thank you.

Any questions of Mr. Maughan? Senator Doolittle.

SENATOR DOOLITTLE: There's a Mr. Robert Boyden who's been around, showed me his design for the so-called Boyden Barrier in the Carquinas Strait.

Have you ever heard of that or had a chance to look at it?

MR. MAUGHAN: Well, not in any detail. I have seen reference to it. I've seen a little sketch of it, too.

SENATOR DOOLITTLE: I just wonder, it seems plausible but nobody really has ever given him the time to let him present it.

I wonder if you would consider doing that as a Member of the Board?

MR. MAUGHAN: I'd be very glad. Many times we've had individuals come up with ideas, and from my standpoint I always like to listen.

Frankly I think there may be some difficulties with it, but I'm certainly glad to listen.

SENATOR DOOLITTLE: Okay, I'd like to have your assessment of that.

MR. MAUGHAN: Sure, I'd be glad to.

SENATOR DOOLITTLE: Do you have a position on these bills to in essence, I guess, build some sort of an additional transfer facility around the Delta?

MR. MAUGHAN: I have no position on that mainly because our Board could very well be involved in some decisions that relate to it, and until all the evidence is before us, I've made it a practice not to try to take a position on matters like that.

SENATOR DOOLITTLE: Okay, thank you.

SENATOR CRAVEN: I recall, Mr. Maughan, you said you've been around a long time, and I want to try to challenge if not mitigate that statement because I noticed in your dossier here you've been around one year, four days less than I have.

(Laughter.)

MR. MAUGHAN: Well, I'm your junior then, Senator.

SENATOR CRAVEN: So I have to look after you younger fellows.

MR. MAUGHAN: That's good. I appreciate that.

SENATOR CRAVEN: Mr. Chairman, if there are no questions, I would like to move confirmation of Mr. Maughan.

CHAIRMAN ROBERTI: Senator Craven moves confirmation of Mr. Maughan.

Is there any opposition in the audience? Seeing none, Secretary will call the roll.

SECRETARY WEBB: Senator Doolittle.

SENATOR DOOLITTLE: Aye.

SECRETARY WEBB: Senator Mello.

SENATOR MELLO: Aye.

SECRETARY WEBB: Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is five-nothing; confirmation is recommended to the Floor.

Thank you. Congratulations.

MR. MAUGHAN: Thank you.

CHAIRMAN ROBERTI: The next appointment is Mr. John Smith, Deputy Director of the Office of Administrative Law.

Mr. Smith, we'll ask you what we ask all the Governor's Appointees, and that is why you feel you're qualified to assume this position?

MR. SMITH: Mr. Chairman, Members of the Committee, thank you for the opportunity to appear before you and to answer any questions you may have about the position of Deputy Director at the Office of Administrative Law.

The resume I submitted indicates that I'm an attorney at law, licensed to practice in California for more than five years, which satisfies the statutory requirements of this position.

I would also like to add that my prior experience includes being a partner in a small business and administrative experience with the State of California.

I was first appointed to this position in May of 1986 and was subsequently reappointed to serve in this capacity during this administration's second term.

As the Deputy Director of the Office of Administrative Law, I am responsible for the management of the legal division which is comprised of the regulatory compliance program and the regulatory determinations program.

If you have any questions, I'd be happy to do my best to answer them. Thank you.

SENATOR DOOLITTLE: I have a question, Mr. Chairman.

CHAIRMAN ROBERTI: Senator Doolittle.

SENATOR DOOLITTLE: Mr. Smith, there are some regulations that your agency does not pass upon. Which ones are those?

MR. SMITH: There are a number of regulations adopted by various State agencies which OAL either does not have a review capacity at all or a limited review. For example, OAL does not review opinions of legal counsel from the Franchise Tax Board. We also do not review building standards.

There are a few others, but there's --

SENATOR DOOLITTLE: In four of those instances of agencies which you don't review, is there some statutory exception created, or what's the basis for your nonreview? Why don't you review those things that you mentioned?

MR. SMITH: OAL reviews all regulations of all the various State agencies with the exception of those noted in the Administrative Procedures Act, which is the Government Code which begins with 11350.

SENATOR DOOLITTLE: And the regulations of the Fair Political Practices Commission, do they fall within that code section that you cited?

MR. SMITH: No, they don't, Senator.

SENATOR DOOLITTLE: Are they reviewed by the Office of Administrative Law?

MR. SMITH: Yes, they are, Senator.

SENATOR DOOLITTLE: I guess there's two types of review; isn't there? One for consistency and one for substance, basically. Is that right?

MR. SMITH: The review that -- OAL reviews primarily for two aspects: a legal review and a procedural review. The legal review focuses on the legal requirements of the APA and the procedural review focuses on the notice requirements.

SENATOR DOOLITTLE: I had understood that you didn't review the regulations of the FPPC.

MR. SMITH: No, Senator, we do review them.

SENATOR DOOLITTLE: On both of those counts?

MR. SMITH: Yes, sir.

SENATOR DOOLITTLE: So, that's treated in all respects like the regulations of any other agency.

It's their position that they're an independent agency and should not, therefore, be subject to the review of the Office of Administrative Law.

Has that changed?

MR. SMITH: I could not speak for the Fair Political Practices Commission. I have heard that that is their position, but we undertake a complete review of their regulations as we do any other State agency.

SENATOR DOOLITTLE: Thank you.

CHAIRMAN ROBERTI: Senator Petris.

SENATOR PETRIS: You started practicing law in '79?

MR. SMITH: That's correct, sir.

SENATOR PETRIS: And you've had civil litigation experience for about five years. Can you tell me what part of the State that was in?

MR. SMITH: In Sacramento -- well --

SENATOR PETRIS: Here in town?

MR. SMITH: Up and down the Valley, primarily.

SENATOR PETRIS: But your base was Sacramento?

MR. SMITH: Yes, it was, sir.

SENATOR PETRIS: Was that period with one firm?

MR. SMITH: No, my legal career has been with three firms. The first firm was a general practice firm, and the last two were civil defense litigation firms based here in Sacramento.

SENATOR PETRIS: So you've had litigation and trial experience as well.

MR. SMITH: Yes, I have, Senator.

SENATOR PETRIS: Was your work on the Native American Heritage Commission in the capacity of a lawyer?

MR. SMITH: No, it wasn't. It was primarily an administrative type of position; however, I did -- the position was not of legal counsel, but I did advise --

SENATOR PETRIS: They tapped your --

MR. SMITH: Yes, they did, Senator.

SENATOR PETRIS: -- your experience and know-how.

I have some questions about some aspects of the work.

How many lawyers do you have on your staff?

MR. SMITH: We have 16 attorneys and 3 paralegals.

SENATOR PETRIS: And you direct the lawyers in the review in the two categories mentioned by Senator Doolittle?

MR. SMITH: Yes, I manage --

SENATOR PETRIS: You're the supervisor?

MR. SMITH: Yes.

SENATOR PETRIS: You don't do any reviews of particular ones yourself? You just see to it that the others do it?

MR. SMITH: The attorneys conduct the review of each regulatory rule-making file, but we have what is called a file review which occurs daily. At that time both the Director and myself review the regulations, and the attorneys present the rule-making file, and at that point legal issues are discussed and the decision is made.

SENATOR PETRIS: You make the final determination?

MR. SMITH: The Director makes the final determination.

SENATOR PETRIS: Now, what is the mission of OAL?

MR. SMITH: The mission of OAL would be broken down into two aspects. The first aspect would be to assure that the agencies adopt regulations which are consistent with the statutory basis upon which they're adopting them; the statute passed by the Legislature.

SENATOR PETRIS: Do you have a lot of cases where they are inconsistent with the statute, or are they generally pretty good in capturing the spirit and the letter of the law?

MR. SMITH: They're generally very good. We do run into occasions where they've exceed the authority to a certain extent, but generally the agencies are very good at it.

SENATOR PETRIS: And the other part of the mission is the drafting, the craftsmanship?

MR. SMITH: The other part of the mission of OAL is to get the public involved in the regulatory process because it affects not only their personal and professional lives, but it is an arena where they can have some effect.

SENATOR PETRIS: Aren't they involved in the public hearings that all agencies are required to hold in order to adopt regulations?

MR. SMITH: That's true, Senator.

SENATOR PETRIS: How does the public get into it at your level?

MR. SMITH: At our level they don't. What I was speaking of is that one of our missions is to spread the word to the public that this is something, these regulations are going to affect their lives, and they need to be involved.

SENATOR PETRIS: Does your office do that, or do you direct the agencies to do it?

I'm not clear as to how that's done.

MR. SMITH: I'm sorry.

At OAL we have a public programs division which we produce various publications which are sent out to the public, Members of the Legislature. We make public appearances. We have a program called the Attorney of the Month whereby an attorney is available to answer questions not only from the Legislature and the agencies, but from members of the public on the regulatory process.

SENATOR PETRIS: Do you have a regular mailing list for the public?

MR. SMITH: Yes, we do, Senator.

SENATOR PETRIS: What does that consist of, individuals or organizations?

MR. SMITH: Both. It consists of individuals, small businesses, corporations, a cross-section of California.

SENATOR PETRIS: Do you have enough people on your staff to do the job, or are you constantly overworked? I won't ask you about under paid.

MR. SMITH: Thank you.

SENATOR PETRIS: Well, let me put it this way. Is the workload in excess of the capacity of the number you have to do the job, or are you comfortable with what is assigned to you in terms of the number of people?

MR. SMITH: Not to be evasive, but it varies so frequently, and let me answer you this way.

The workload at the Office of Administrative Law varies on a daily basis. We could have, for instance, 50 files in house, have a very comfortable workload, and then we could get in 10 emergency regulations which must be reviewed in 10 days. So, it places great strains on the workload at various times, but we always manage to meet our deadlines and the work gets done.

SENATOR PETRIS: Well, I have a report that the deadline wasn't met on carrying out the provisions of AB 1013. Let me tell you what's been given to me and you can comment on it.

I'm informed that in that aspect of the work under AB 1013 relating to underground regulations -- I guess that means informal guidelines, rules and orders short of the formal published regulations?

MR. SMITH: Yes, they've not been adopted.

SENATOR PETRIS: On bulletins and so forth, but haven't been adopted formally.

I'm informed that it took almost four years for the OAL to implement AB 1013 with respect to that part of the operation. And when the implementation was finally done last year, there were three professional positions requested by your agency to handle the workload.

The analyst found that it was absolutely unnecessary and recommended elimination of the positions because it had already been allocated two and a half and hadn't even been used or filled.

So we have two contradictions here: one is a four-year delay in carrying out the statute which, unless you have some information, and this may be before you got there so you're going to have to rely on the history of the agency or maybe the boss. On the one hand it took four years, and on the other hand, there were unfilled positions at a time when a request for more positions was made.

Now, these questions may be better directed to the Director, I realize that, but to the extent that you know, I'd appreciate it if you could tell me.

MR. SMITH: As you indicate, Senator, some of this is before my time.

My understanding that the Legislature was advised that OAL would have in place the regulations to implement AB 1013 as of January 1, 1986.

We issued the first AB 1013 determination in late March or early April of 1986. The reason for that three-month delay is because there is a public comment period and a 75-day period which gives OAL the proper time to research and draft the determination.

SENATOR PETRIS: That's all part of the standard period. We're talking way in excess of that.

I know you have to have a public comment period. That's the essence of getting the public in, as you indicated earlier; right?

MR. SMITH: Correct.

SENATOR PETRIS: This goes way beyond.

Do you have any information as to --

MR. SMITH: If you're speaking of a time period before 1986, it's my understanding that there was some delay, but that was occasioned because we did not have regulations in place. And the -- again, it's my understanding the Legislature and the State agencies requested that we do have regulations in place so that they would be able to follow these in these determinations.

We had a training session for all agencies, I believe, in January of '86, and from then on we've been issuing determinations.

SENATOR PETRIS: Okay, now with respect to the staff and so forth, has the agency now provided the analyst with information needed on workload so that they can make a proper analysis on budget requests for '87-'88?

MR. SMITH: We're working very closely with the budget analyst to provide that information, yes.

SENATOR PETRIS: Is it ready yet?

MR. SMITH: I don't believe it is. Our administrative --

SENATOR PETRIS: What's the problem?

MR. SMITH: I don't believe there's any problem, Senator. Quite a bit of information has been supplied already. I'm not certain --

SENATOR PETRIS: Is that not in your shop?

MR. SMITH: It's not in my shop.

SENATOR PETRIS: Do you prepare the workload information for the attorneys' section?

MR. SMITH: The attorneys provide time sheets, as in any law firm, of what they're working on and how much time it took them. So we have that information. Working with the Legislative Analyst is part of our administrative function.

SENATOR PETRIS: Now, there's some additional information I need some clarification on.

The Joint Legislative Budget Committee informs us that based on the analysis of the workload, it takes your shop about 300 hours to determine if an informal guideline, this underground stuff, and informal guideline or a rule or an order is actually a regulation and should be treated as a regulation.

And the question is: Why would it take 300 hours just to determine the proper status of a particular order without even an analysis as to the merits of the order itself or of the guideline? Let's use the word guideline for all of them for simplification.

MR. SMITH: Each determination -- let me back up, Senator. It's the policy of the Office of Administrative Law to undertake a uniform review of every request and research. We are also -- it's also the policy to issue determinations which are consistent not only with case law but with other OAL determinations.

Issuing, researching and drafting a determination is best akin probably an Appellate Court brief. We get into the areas of federal law, how they impact State law. It's an extremely time-consuming process.

As you can understand, with implementing a new program we certainly want it to be complete. We don't want these -- this program benefits the public. We don't want to have a situation where our research is incomplete and subject to challenge, so we're being very thorough and very conscientious that we have unturned every stone.

SENATOR PETRIS: Do you think 300 hours is justified?

MR. SMITH: Yes, I do, Senator.

SENATOR PETRIS: You know, the fellow who appointed you would not appreciate the reference to the Appellate Court type of case work, because he's been a very harsh critic. He says that they spend entirely too much time messing around with things like research.

MR. SMITH: No comment.

The only thing I would say is that, again, this is implementing a brand new program. We're being extremely careful.

I anticipate that some determinations which we will issue in the future will not take quite as long because some of the issues have already been addressed.

SENATOR PETRIS: Well, I don't know how new you mean by brand new. It started in '82, and it wasn't implemented until '86, and now you're doing it. It takes 300 hours just to find out if this guideline is a guideline or in true a regulation. And then it takes another 40 hours to determine if that guideline complies with the statute and is properly drafted.

That seems to me to be an awful long time.

Do you feel that that is absolutely necessary in both of those categories?

MR. SMITH: Up to now that time-frame has been necessary. We not only just look at the definition of whether or not Document A is a regulation. Granted, that in and of itself would not bee that time-consuming.

But we have to examine the document itself very carefully. It has to be -- many times it has -- the response from the agency is that we aren't -- we don't have any control over this. This is because we're complying with the federal law. We have to research the federal law to make sure -- to determine if that is the case.

SENATOR PETRIS: Do you have a list of agencies that you regard as very weak in their manner of preparing the regulations as opposed to other agencies?

MR. SMITH: No. A list? No, I don't, sir.

SENATOR PETRIS: In your mind are there some agencies that just do a bad job of doing the regulations?

MR. SMITH: No. Frankly, I wouldn't phrase it that way.

I think there are some agencies who don't have as much experience as some of the others in rule-making. For instance, some agencies, Fish and Game Commission, they are constantly sending us regulations. There's some agencies which maybe have one rule-making file every two years. They generally have a little more difficulty.

SENATOR PETRIS: Don't they all have lawyers to do the actual drafting of regulations?

MR. SMITH: No, they don't.

SENATOR PETRIS: They don't?

MR. SMITH: No.

SENATOR PETRIS: Do they borrow lawyers from other agencies?

MR. SMITH: It's my understanding that agencies who do not have lawyers either do it themselves, a staff services analyst, for instance, would put it together, or they get some advice from the Attorney General's Office. They can also --

SENATOR PETRIS: There was a time when every regulatory authority had its own staff of lawyers.

MR. SMITH: I'm certain that is not the case today, but I don't --

SENATOR PETRIS: I know, that was one of our budget fights. A lot of the lawyers were taken away from a lot of the agencies.

Is that why some of the agencies have difficulty; that the statutory regulations are drafted by lay persons?

MR. SMITH: Many lay persons, many nonlawyers, do a very good job if they've been doing it for a length of time.

The problem is I know the agencies have a turnover, and many times there's new employees that are put in that position to fulfill that function and they really don't understand how it works. We give them as much guidance as possible, but that's certainly part of the problem.

SENATOR PETRIS: Do you ever send any of your staff people to sit in on a hearing on regulations just to see how they operate?

MR. SMITH: No, we don't. We do meet with various agency personnel to assist them, not in drafting the regulations, but any problems they may be having.

SENATOR PETRIS: Like what?

MR. SMITH: Oh, for instance, if the regulation is disapproved for a particular reason and the agency is having difficulty understanding or complying with the disapproval decision, it's very common for one of our attorneys to meet with the agency personnel and to help them to understand how they could comply with the APA.

SENATOR PETRIS: Is that before they conduct hearings, say, on a particular statute?

MR. SMITH: No, that's after. After the regulation has come to OAL and for whatever reason --

SENATOR PETRIS: They're rejected.

MR. SMITH: Yes, disapproved.

SENATOR PETRIS: Wouldn't it be better to do it in advance? Since they don't have their own lawyers, wouldn't it simplify your attorneys' jobs if these things were -- these orientation or training sessions or guidance sessions -- were held before the public hearings? Not necessarily related to a particular statute, but if the agency has a bunch of things coming up because bills are coming over, new statutes, wouldn't it be more helpful to do it beforehand so that you can reduce the workload on your own staff and improve the work of the agency?

MR. SMITH: In general yes, and in point of fact we are probably being called on that very point. Like I indicated, we have an Attorney of the Month who's taken off his or her regular duties and is available to the agencies or members of the public or the Legislature to answer questions about their review process. And I'm certain that the attorneys are called and asked about particular points in the APA at various points along the regulatory process.

SENATOR PETRIS: Are your attorneys divided into subject matter specialties?

MR. SMITH: No, they're not.

SENATOR PETRIS: They're all expected to handle any statute? There's no expertise being developed in a particular field?

MR. SMITH: There's expertise being developed, not broken down by agency, but broken down by portions of the APA.

And that's being done for a couple of reasons, but one of the reasons I have asked that be done is so that we will be able to develop training packets, and with the use of our automation system, we will be able to identify areas where a particular agency is having problems. We will be able to then work with the agency more effectively.

SENATOR PETRIS: What are the categories under APA that are involved?

MR. SMITH: Well, of the six: authority, reference, consistency, clarity, nonduplication, and necessity. But we also have gone beyond that, and people are working on such things as permit reform acts, a number of issues that we see reoccur that we would like to address, like I say, before it gets to us.

SENATOR PETRIS: I've had some complaints from two or three agencies that didn't come -- a couple of them just came up during the normal course of hearings in another committee. And then more specific in the third that involves rejection of regulations after they've gone through the process. As a matter of fact, in one of them I'm sure they have staff assigned to them by the Attorney General all the time. They have their own counsel. Now, whether that counsel participates in the drafting, I don't know.

But they go through a series of public hearings, and there's a lot of input on both sides, or ten sides, for interpreting the statute. And then they draft them, and they send them up to your office and they get rejected. BCDC, for example, had one set rejected about three times.

The complaint is that the rejection is very limited in the information it contains. It would be helpful as to where the problem is.

What is your view of a rejection slip? Is it like the publisher who says to the author: "Nice work, but not quite the one we're interested in," period, or what?

MR. SMITH: No, Senator. We -- when a regulation is disapproved by OAL, we first send out a Notice of Disapproval which is very brief, indicating that a certain regulatory package has been disapproved for several reasons. It is not explanatory at all.

Seven days later the agency receives a disapproval decision which sets out each reason. There's a statement of the law and an analysis of the reason why it was disapproved.

As I indicated previously, if agencies have difficulty understanding what is the problem, they are -- we do assist agencies by talking to them and trying to work it out.

SENATOR PETRIS: Well, in this one case, they were rejected three times.

Do you remember that particular incident? It has to do with houseboats and live aboard on the Bay, which has been a problem for years for some jurisdictions and the BCDC as well.

MR. SMITH: Senator, we review so many regulations every day, I don't have the -- I have a vague recollection of that regulation but nothing -- nothing specific.

SENATOR PETRIS: Nothing specific? Well, it just seemed to me a little bit harsh on the agency, which as been around a

long time and has had a lot of experience. Now, I don't know what kind of a turnover they have. I don't know if that turnover you're talking about applies to them, but they've had excellent staff. They've only had two directors in its whole history, which goes back 20 or more years.

They have always been very careful, my experience has been because I've dealt with them as a Legislator, very careful in doing their work. And now, all of a sudden, bang, they get three in a row rejected without -- they feel there isn't enough guidance or explanation. In other words, the next question is: What do you want anyway?

Now, when you get it to them in a decision, that's already in a decision form; isn't it?

MR. SMITH: Correct.

SENATOR PETRIS: Are those seven days used to give them an opportunity to comment?

MR. SMITH: No, this seven days gives OAL the opportunity to write the decision and get it off to the agency. The agency --

SENATOR PETRIS: There's no communication during that week between the two?

MR. SMITH: Uh, no communication that would -- once a file is disapproved, it's been disapproved, we need to -- we are legally obligated to write a disapproval decision. They are -- there is communication once they've received a disapproval decision, and of course they are free to resubmit the file. And at that point I know our attorneys do work with them.

In the BCDC case, I do know that one of our attorneys went to a meeting in San Francisco and did meet with their counsel, but as to the specific regulations, I have no firm recollection.

SENATOR PETRIS: I'm told that the majority of the commissioners, and a lot of them are Governor's Appointees and a lot of them are just automatically appointed by a local government from some elected officials, but I'm told that the majority, because of a series of these problems, is exasperated and may be compelled to go to the Attorney General for an interpretation on some of these things to compare it.

You don't have any knowledge of that?

MR. SMITH: Of the specific regulation, no I don't. If you would like, I'd be happy to look into it for you and get back to you.

SENATOR PETRIS: I would appreciate it.

MR. SMITH: I'd be happy to do that.

SENATOR PETRIS: Now, is this procedure of the seven days advance notice followed by the decision, is that done because the agency views itself more as a court than an administrative agency?

MR. SMITH: Are you speaking of the Office of Administrative Law?

SENATOR PETRIS: Yes.

MR. SMITH: That time-frame is set out in statute which is why we follow it.

SENATOR PETRIS: I know, but my question is: How do you treat that time period?

Is it improper, for example, if I were the executive director of an agency, and I worked very hard on these regulations and I had a bunch of hearings, and had an interpretation that seemed to be reasonable even though I'm a layman, and it got bounced on me, and I know I'm facing a decision in seven days, is it improper for me to contact the attorney who wrote the letter or studied the case to ask him what specifically is wrong and give me a chance to amend the regulation before the decision comes down?

MR. SMITH: The attorney would be free to communicate what the reasons for disapproval was, and at that point it would give the agency a chance to begin working on it.

SENATOR PETRIS: That's after the decision.

MR. SMITH: Correct.

SENATOR PETRIS: That means they've got to go through a whole series of hearings again in order to republish the regulations; don't they?

MR. SMITH: Not necessarily.

SENATOR PETRIS: How do they correct it?

MR. SMITH: It depends upon what type of problem it is. If it's not a substantive problem, it would be a matter of submitting new regulations with the changes. They may not have to go back out to either a 15-day public notice or begin the notice process again.

If it's fatally defective because of a notice problem, then they are going to have to go back out to notice --

SENATOR PETRIS: You check procedural things as well?

MR. SMITH: Yes, we do.

SENATOR PETRIS: That's understandable.

MR. SMITH: Yes, we do.

I'd be happy to check into the BCDC regulations for you and get back to you.

SENATOR PETRIS: I understand their next meeting is on Monday. Oh, they're meeting with you on Monday. Well, you can get some answers there and vice-versa.

MR. SMITH: True.

SENATOR PETRIS: That's all; thank you.

MR. SMITH: Thank you, Senator.

CHAIRMAN ROBERTI: Any further questions? Is there any opposition in the audience?

SENATOR CRAVEN: Move confirmation of Mr. Smith.

CHAIRMAN ROBERTI: Senator Craven moves the confirmation of John D. Smith, Deputy Director of the Office of Administrative Law.

Secretary will call the roll.

SECRETARY WEBB: Senator Doolittle.

SENATOR DOOLITTLE: Aye.

SECRETARY WEBB: Senator Mello. Senator Petris. Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is three to nothing; confirmation is recommended to the Floor.

MR. SMITH: Thank you.

(Thereupon this portion of the Senate Rules Committee hearing was terminated at approximately 2:35 P.M. Thereafter, at the request of Senator Petris, the vote on the confirmation of Carole A. Hood as Chief Deputy Director of the Department of Social Services was rescinded and her confirmation hearing has been scheduled for the date of May 20, 1987.)

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CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 23rd day of April, 1987.

Evelyn Mizak

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Shorthand Reporter

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STATE OF CALIFORNIA

STATE CAPITOL

ROOM 113

SACRAMENTO, CALIFORNIA

WEDNESDAY, APRIL 1, 1987

1:45 P.M.

Reported by:

Evelyn Mizak
Shorthand Reporter

1 APPEARANCES

2 MEMBERS PRESENT

3 SENATOR DAVID ROBERTI, Chairman

4 SENATOR WILLIAM CRAVEN, Vice Chairman

5 SENATOR JOHN DOOLITTLE

6 SENATOR HENRY MELLO

7 SENATOR NICHOLAS PETRIS

8 MEMBERS ABSENT

9 NONE

10 STAFF PRESENT

11 CLIFF BERG, Executive Officer

12 PAT WEBB, Committee Secretary

13 RICK ROLLENS, Consultant on Bill Referrals

14 NANCY MICHEL, Consultant on Appointments

15 ALSO PRESENT

16

17 WILLIAM BAGLEY, Member
California Transportation Commission

18 J. WILLIAM OROZCO, Member
Board of Directors of the

19 California Community Colleges

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21

22

23

24

25

26

27

28

I N D E X

	Page
Proceedings	1
Governor's Appointees:	
WILLIAM BAGLEY, Member California Transportation Commission	1
Motion	1
Committee Action	2
Statements by MR. BAGLEY re:	
Federal Highway Bill Override	2
Confirmation of MARGE HANDLEY	3
J. WILLIAM OROZCO, Member Board of Directors California Community Colleges	4
Question by SENATOR MELLO re:	
Funding	5
Motion	7
Committee Action	7
Termination of Proceedings	7
Certificate of Reporter	8

P R O C E E D I N G S

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CHAIRMAN ROBERTI: Next item on the agenda is Governor's Appointees appearing today. First is Mr. William Bagley, Member of the California Transportation Commission.

SENATOR MELLO: Can we put this over for 30 days?

(Laughter.)

CHAIRMAN ROBERTI: You will recall that Mr. Bagley's been with us in the past on various appointments that the Governor has given him.

Your term is up, I take it.

MR. BAGLEY: Yes, sir.

It's very nice to be here, sir. I respectfully ask your continued friendship.

CHAIRMAN ROBERTI: I assume you're qualified to assume this position.

MR. BAGLEY: Mezzo mezzo.

(Laughter.)

CHAIRMAN ROBERTI: Very good, that means somewhat.

SENATOR CRAVEN: Following Mr. Bagley's explanation, I'd like to move his appointment.

CHAIRMAN ROBERTI: Senator Craven moves former Assemblyman now Commissioner Bagley's confirmation to the Floor.

Secretary will call the roll.

Excuse me, is there any opposition?

Now the Secretary will call the roll.

SECRETARY WEBB: Senator Doolittle.

SENATOR DOOLITTLE: Aye.

SECRETARY WEBB: Senator Mello.

SENATOR MELLO: Aye.

SECRETARY WEBB: Senator Petris. Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Senator Roberti.

CHAIRMAN ROBERTI: Mezzo mezzo.

The vote is four to nothing.

Congratulations.

MR. BAGLEY: Thank you, Senator.

Without taking your time, may I report that the highway bill, the major federal highway bill, is hanging in the balance with one vote needed for the override.

If we do not get that bill this year, we might as well disband, and I'm exaggerating. We will stop advertising projects, and by September or October thousands of people will not be employed. That's where it is.

So, the one vote, if you don't mind, Senator --

CHAIRMAN ROBERTI: Please.

MR. BAGLEY: -- is former Governor and present freshman Senator Terry Sanford, Democrat, who voted, quote-unquote, "with the President" because there wasn't enough money in the bill. His arm is now being twisted by Bobby Burns and a few other people.

(Laughter.)

CHAIRMAN ROBERTI: Not enough money, that sounds like a copout.

MR. BAGLEY: And with my fingers crossed, I hope we get a highway bill this year; otherwise -- we did, we the State did very well.

CHAIRMAN ROBERTI: The override has already taken place in the House?

MR. BAGLEY: By a vast vote, something like 250 to 60.

Metro Rail's in deep trouble if the override doesn't take place.

So, I thought I'd give you the news.

CHAIRMAN ROBERTI: Thank you.

MR. BAGLEY: As long as I'm here, one more gratuitous, if I may, Senator, comment. Next week, and I'm not jumping the gun, I hope I'm not, Marge Handley, who's in the audience, will be here. She's my colleague on the Transportation Commission. I'm going to try to be here to support her.

If I can't be here, please know that she's been a great Commissioner for the last year. I've looked into some of these little accusations and problems, and I'm here to tell you there ain't no problem. And I say that as a colleague, and I do support her and I ask your support next week.

CHAIRMAN ROBERTI: Very good.

MR. BAGLEY: Thanks for the time.

CHAIRMAN ROBERTI: We'll take your recommendation under advisement. Thank you, Mr. Bagley.

Next confirmation is Mr. J. William Orozco, Member of the Board of Directors of the California Community Colleges. Mr. Orozco has served in the past in a distinguished capacity as a member of the Los Angeles Community College Board of Trustees.

Mr. Orozco, we'll ask you what we ask the Governor's Appointees when they appear, and that is why you feel you're qualified to assume this position?

MR. OROZCO: Senator and honorable Members of this Committee, I served on the Los Angeles Community College District from its inception in 1969, and I was elected to that along with former Governor Jerry Brown, Bob Kline, Marian La Follette, Mike Antonovich, who have gone on to higher things in life.

I have aspirations only to do what I can for the community colleges, being a product of the Los Angeles Community Colleges many, many years ago. And I think a great deal can be done to help our colleges which, as most of you know, are undergoing very trying times at this present moment.

CHAIRMAN ROBERTI: Thank you very much, Mr. Orozco.

Are there any questions?

SENATOR MELLO: I'd just like to ask a couple.

CHAIRMAN ROBERTI: Senator Mello.

SENATOR MELLO: I'm not singling you out, but I am concerned as I believe you are and others about our community colleges. I have five in my district, and I meet with them and they complain to me a lot about inadequate funding and loss of enrollment, and I really think something has to happen to make a change.

Apparently your commitment is also in the right direction.

The problem, as I see it, is more funding in order to help them. They're actually getting less now in dollars than

they got some years ago. And secondly, there's a debate going on now about whether or not we should put them in a category like the universities are with a Board of Regents statewide and do away with or minimize the local control. I think local control is a wonderful statement, but if it doesn't translate into meaningful actions, then I just don't know what the answers are.

I'd like to hear your viewpoints on funding, and if you feel you could be a force in talking to the Governor, who I feel has been pretty negligent and abandoned to some extent this important component of higher education, where he's been very good, I think, on the University of California and the State University levels.

MR. OROZCO: Senator Mello, I think you have mentioned the major problems.

One of the problems, of course, appears to be the Governor. But I'm sure most of you will recall the administration of Jerry Brown, who at various moments was called a great enemy of education. I think most governors have been charged with that, including our now President, former-Governor Reagan.

I think most of these guidelines, rules, formulas were developed during the Brown administration, and Brown served as a member of the Board of Trustees.

I think one of the problems is the colleges are looked upon by Legislators as some type of a child that needs a great deal of guidance. I think the community colleges need a greater independence from the Legislature than they now have. I think

they are an adult child. They deserve the stature of the State College and the State Universities. That would help create, I think, a better atmosphere for them.

I believe that the present formula based upon average daily attendance is inadequate, you're quite right, to fund the colleges. And we see a rather strange phenomena there in that administrative costs, expenses, keep going higher and higher, enrollment has been on the decline, it apparently is on somewhat of an upward curve now; therefore, they're getting less money. More administrative costs, less money.

Perhaps something based upon the attendance, the location of the colleges, the average income per students might be investigated.

The final thing is, as regards Governor Deukmejian, I think it's been unfortunate that most major educators who have a deep responsibility to community colleges essentially have been highly critical of the Governor. And it has not been his making. It is difficult on the one hand to charge the top man in the State with neglect, and on the other hand put out the hand for additional money.

I have asked people where ever I go in the discharge of my duties to calm down the rhetoric. Now he has his own appointees on the Board. I hope to be instrumental in helping the Governor better understand the colleges and be willing to help us with our problem.

SENATOR MELLO: Thank you.

CHAIRMAN ROBERTI: Is there any opposition in the audience? Do I hear a motion?

SENATOR CRAVEN: Move Mr. Orozco.

CHAIRMAN ROBERTI: Senator Craven moves Mr. Orozco's appointment be recommended to the Floor for confirmation.

Secretary will call the roll.

SECRETARY WEBB: Senator Doolittle.

SENATOR DOOLITTLE: Aye.

SECRETARY WEBB: Senator Mello.

SENATOR MELLO: Aye.

SECRETARY WEBB: Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is five to nothing; confirmation is recommended to the Floor.

Congratulations.

MR. OROZCO: Thank you very much.

CHAIRMAN ROBERTI: Mr. W. Don Maughan's appointment as a Member of the Water Resources Control Board will be put over to the 22nd of April at the request of Senator Keene.

(Thereupon this portion of the Senate Rules Committee hearing was terminated at approximately 2:13 P.M.)

--oo0oo--

CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 1st day of April, 1987.

EVELYN MIZAK
Shorthand Reporter

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HEARING

SENATE RULES COMMITTEE

STATE OF CALIFORNIA

STATE CAPITOL

ROOM 113

SACRAMENTO, CALIFORNIA

MONDAY, FEBRUARY 9, 1987

1:40 P.M.

Reported by:

Evelyn Mizak
Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR JOHN DOOLITTLE

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

MEMBERS ABSENT

SENATOR WILLIAM CRAVEN, Vice Chairman

STAFF PRESENT

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Appointments

ALSO PRESENT

ADELBERT A. PIERCE, Director
Department of Motor Vehicles

MICHAEL SALERNO
Deputy Legislative Counsel

BETTY READER

DIANA SANCHEZ HARWOOD, National President
American G.I. Forum

JOHNNY WALKER, Member
Veterans of Foreign Wars

LEONARD MATLOVICH

I N D E X

	Page
Proceedings	1
Opening Statement by CHAIRMAN ROBERTI	1
Governor's Appointees:	
ADELBERT A. PIERCE, Director Department of Motor Vehicles	1
Statement by SENATOR MELLO re:	
Absence of SENATOR PETRIS	2
Recess	2
Resumption of Proceedings	2
Testimony of BETTY READER	2
Questions by CHAIRMAN ROBERTI re:	
Former State Employment	3
December, '83 Meeting	3
Alleged Comment by MR. PIERCE	3
Timing of Alleged Comment	4
Discussion of Alleged Comment	4
Questions by SENATOR PETRIS re:	
MR. KELLY's Presence at Meeting	5
Context of Alleged Comment	5
Questions by SENATOR MELLO re:	
Exact Time of Alleged Comment	7
Presence of MIKE VADER at Meeting	9
Timing of Alleged Comment	12
Testimony of MARK GUERRA	12
Questions by SENATOR PETRIS re:	
Reasons for Unavailability	13
Witnesses in Opposition:	
DIANA SANCHEZ HARWOOD, National President American G.I. Forum	14
Questions by SENATOR MELLO re:	
Identity of Director allegedly Making Derogatory Remarks	17

I N D E X (Continued)

	Page
JOHN WALKER, Member Veterans of Foreign Wars	17
LEONARD MATLOVICH	19
Questions by SENATOR PETRIS re:	
Hypothetical Supposition	21
Support Letter from Gay	22
Rebuttal by MR. PIERCE	23
Questions by SENATOR PETRIS re:	
Cal Vet Loan	25
Statement by CHAIRMAN ROBERTI re:	
Letters in Support	26
Statement by SENATOR MELLO	27
Motion	28
Statement by SENATOR ROBERTI	28
Question by SENATOR PETRIS re:	
Retaliation	31
Committee Action	31
Statement by CHAIRMAN ROBERTI re: Confirmation Deadline	31
Motion	32
Committee Action	33
Termination of Proceedings	33
Certificate of Reporter	34

P R O C E E D I N G S

--ooOoo--

CHAIRMAN ROBERTI: The Committee will come to order. We have only one item before us, and it's here before us because of the deadline before the State Senate, that one year is the maximum amount of time to transpire after the Governor makes an appointment before that appointment expires and without Senate action being taken on it.

We have before us, therefore, the appointment of Mr. Adelbert A. Pierce, Director of the Department of Motor Vehicles.

Is Mr. Pierce present? If you want to come up, assume the chair, you may do so.

I understand Ms. Betty Reader is here in answer to our subpoena. Are you present? She's on her way.

Well, I had indicated that we will take some very, very brief testimony, since this has been up before us twice all ready, and I regret that the testimony has been brief. However, I understand in the audience are a couple of witnesses in opposition. Mr. Pierce will be given a short chance to make a rebuttal to any witnesses in opposition. I only have two names: Ms. Harwood and Mr. Matlovich, and also Ms. Reader who will testify in response to our subpoena, and I do not know what the gist of her testimony is.

I would like to take Ms. Reader first.

SENATOR MELLO: Mr. Chairman.

CHAIRMAN ROBERTI: Senator Mello.

SENATOR MELLO: Wouldn't it be advisable to make sure that Senator Petris might be here if we're going to hear some additional testimony?

CHAIRMAN ROBERTI: I certainly think that would be advisable, except that I don't know where he is.

SENATOR MELLO: I know Senator Craven is ill today, but it would appear that testimony given may affect a person's decision, and it's better to hear the testimony.

Is Senator Petris here?

CHAIRMAN ROBERTI: I would entertain a motion that we adjourn for 15 minutes. Senator Doolittle so moves. Any objection?

We stand in recess for 15 minutes, such will be the order. We'll be back at 2:00.

(Thereupon a brief recess was taken.)

CHAIRMAN ROBERTI: Ms. Reader, please come forward.

MR. SALERNO: Before you're seated, could you raise your right hand.

(Thereupon BETTY READER was, by the Legislative Counsel, sworn to tell the truth, the whole truth, and nothing but the truth before this Committee.)

MS. READER: I do.

CHAIRMAN ROBERTI: Ms. Reader, please state your name and indicate your current position.

MS. READER: My name's Betty Reader and I'm a real estate broker.

CHAIRMAN ROBERTI: Were you formerly a Deputy Director of the Department of Consumer Affairs?

MS. READER: No. I was formerly Deputy Director of Administrative Services for the Department of Fair Employment and Housing.

CHAIRMAN ROBERTI: Deputy Director for what subdivision?

MS. READER: For Administrative Services for the Department of Fair Employment and Housing.

CHAIRMAN ROBERTI: And did you attend a meeting in December of 1983?

MS. READER: Somewhere around that time.

CHAIRMAN ROBERTI: In the conference room adjacent to Mr. Pierce's office?

MS. READER: Yes.

CHAIRMAN ROBERTI: Was that meeting one which was normally a meeting in which the various department officials, or department heads, or officers in the Agency discuss pending legislation?

MS. READER: It was a routine meeting.

CHAIRMAN ROBERTI: Right, and during that meeting did you hear Mr. Pierce make a comment something to the effect that he knew what he could do about the problem, and I guess the problem was homosexuals, and that is that he could use a submachine gun, or something to that effect?

MS. READER: He said something to the effect, or "I know how to take care of that problem; give me a submachine gun."

It was not during the meeting, however.

CHAIRMAN ROBERTI: It was not during the meeting?

MS. READER: It was as Mr. Pierce was walking in the door.

CHAIRMAN ROBERTI: It was before the meeting?

MS. READER: Before the meeting was formally convened with Mr. Pierce, to my recollection.

CHAIRMAN ROBERTI: Is there a formal convocation of the meeting?

MS. READER: Well, what I'm saying to you is, he was walking in the room, and given the setting that I recall, he was walking in. He was not formally addressing anybody. He made the statement very quickly, like that, walking in the door.

CHAIRMAN ROBERTI: Did you take that reference to mean the submachine gun was a reference to homosexuals?

MS. READER: Yes, I did.

CHAIRMAN ROBERTI: That same comment was one which Mr. Garcia indicated that he and you discussed after the meeting?

MS. READER: We had a discussion about it as we were walking out the door.

CHAIRMAN ROBERTI: Did you ever discuss that with anybody else?

MS. READER: I may have. I don't recall at this point what was said.

CHAIRMAN ROBERTI: Thank you very much.

Are there any other questions of Ms. Reader?

SENATOR PETRIS: Was Mr. Kelly there?

MS. READER: I recall Mr. Kelly being in the room.

SENATOR PETRIS: Was he close to Mr. Pierce?

MS. READER: I don't recall exactly how close, maybe ten feet away.

SENATOR PETRIS: Hearing distance?

MS. READER: Well, I'm not sure that he was paying any attention. I assume he could have heard.

SENATOR PETRIS: Did you talk to Mr. Kelly about it after?

MS. READER: I don't recall talking to Mr. Kelly about it afterwards, no.

SENATOR PETRIS: Can you tell us a little more about the context? You've expanded on it considerably in your written statement. Would you go into that a little bit about the general atmosphere and the tone?

MS. READER: As I indicated in the letter that I directed to you gentlemen, I had quite a bit of concern about the manner in which I feel that this has been exaggerated, given the fact that I can understand why people wouldn't remember it, and that Mr. Pierce wouldn't even necessarily recall it because it was said very quickly. People did not have their attention directed to him. It wasn't as though he was sitting as you are now, chairing the meeting.

I'm not sure that everybody in the room could have even heard that comment at the time that it was made, and it was said

in a very offhand manner during a period of time where there were thousands of letters, I'm sure, coming in to Members of the Legislature as there were to the Department, the Governor's Office, and the State and Consumer Services Agency. It was a very controversial issue that had both strong proponents and strong opponents.

And my interpretation -- unfortunately at the time that I signed the affidavit, I had no idea that it was going to be misinterpreted or I would have made it very clear that affidavits do not contain the context, body language, and the events surrounding a statement.

And I took it as an offhand comment that was inappropriate, and one of those things that someone would later feel very sorry that they had made a statement, but not unlike looking back at 20 years of your life and recognizing that at some point in time all of us, or almost all of us, have said some thing that we later regret because it can be misinterpreted or it can be exaggerated, as I feel this situation, as it was not made in malice. It was not -- certainly not reflective of the policy decisions that either Mr. Pierce or the Agency made.

Does that help clarify the context in which it was made? It was not said in a serious manner. That's why I can understand that he wouldn't even recall it. It was just a split second walk in the door, like a parting comment that you might make exiting a room.

SENATOR PETRIS: Your letter refers to it as made like a joke.

MS. READER: Correct.

SENATOR PETRIS: In jest?

MS. READER: Uh-huh.

SENATOR PETRIS: Thank you.

CHAIRMAN ROBERTI: Senator Mello.

SENATOR MELLO: Thank you, Mr. Chairman.

I read your affidavit at our first meeting. Since then we've tried with 30-50 phone calls and subpoenas to try to bring you here, but I guess you explained in your letter you were not readily available. We're happy that you came here today.

One of the questions I had then is that this affidavit, you said the date was sometime in December of 1983. What I was somewhat surprised at is how you and others could not pinpoint the date exactly as a certain date of the year, of the month, and certain time of day.

Do you have any further elaboration on that?

MS. READER: Yes, as I think I indicated in the letter to you, I can understand that there would be confusion over the setting, the meetings, and so forth, because it was very normal for the Department to be called to discuss various aspects of a given topic over a period of months, if it was a complex issue that required a lot of research. Sometimes those meetings were held in one room; sometimes they were in another. They sometimes involved the same individuals; other times they did not. There were people coming and going from the meetings on occasion. In other words, somebody might be there at the beginning of the meeting and then, because of other commitments, have to leave, or

would be late coming to the meeting and so would only be there for a portion of the meeting.

I have no records, no written notes dating back that far regarding this matter at all. I know I couldn't tell you exactly who was there every moment of the period of time or anything. And that's how I think it's very easy for somebody to get confused, because as I say, a lot of the same people were involved in various meetings.

And with respect --

SENATOR MELLO: I'm surprised, because all of you represent high ranking officials, and you'd think that all of us have the same problem. We're going to meetings, and meeting with people, but somehow we have to put down those appointments that we have and meetings we're going to. And I keep my record because Internal Revenue or the State Franchise Tax Board, somebody gets looking, and you have to sort of reconstruct where you've been.

I'm just amazed at the lapse of memory by so many of the people that testified here.

MS. READER: Well, as I say, there were a number of different meetings on a number of different topics. And sometimes we knew in advance; sometimes we would be called that day to come down and talk about something.

I don't consider it strange. It's not a record that I would need for the Franchise Tax Board, so it would not be one that I would keep for that purpose.

SENATOR MELLO: In your affidavit, you also listed there Shirley Chilton, Mark Guerra, Mike Vader, William Garcia, Mike Kelly in addition to Mr. Pierce and yourself.

Was Mike Vader present?

MS. READER: Well, number one, I haven't seen a copy of my affidavit since I signed it. Mr. Garcia gave me a copy as I recall, but I haven't seen it since then and I do not know where it is.

SENATOR MELLO: You mean to say you haven't seen a copy of your affidavit?

MS. READER: Of my affidavit that I signed for Mr. Garcia, I haven't seen it since the time I signed it, no, sir.

SENATOR MELLO: To answer the question from your own memory, was Mr. Mike Vader present?

MS. READER: As I said in the letter that I wrote to you, my recollection was that the only individuals who were in the room at the time the comment was made were Mike Kelly, Del Pierce, Bill Garcia, Mark Guerra and myself.

In discussing it with Mr. Garcia prior to the time that he wrote out the affidavit, his records indicated or his recollections were that the other individuals were there. They may have been. I do not have any reason to say that they were or they were not. All I know is that my only recollection of who was in the room at the time the comment was made were the individuals that I have named for you in that letter.

SENATOR MELLO: I'd like you to have a copy of your affidavit, because you did sign in this affidavit that Mike Vader was present.

MS. READER: During the time that the comment was made? Is that what it says?

SENATOR MELLO: Well, your statement I'm reading, signed by you:

> "Others present at the meeting were Shirley Chilton, Mark Guerra, Mike Vader, William Garcia, Mike Kelly ..."

That was signed by you.

MS. READER: Correct. It says "others present at the meeting". It does not say at the time.

That's just exactly what I was referring to in my letter to you, that unfortunately this affidavit, because it was done in such a summary-type of fashion, certainly does not place the context, and the events, or how things happened, when they happened, and so forth.

I did not state here, as I indicated to you I didn't think that I had, that they were present necessarily when the comment was made.

SENATOR MELLO: I only read one sentence because I don't want to reread the whole thing, but the whole paragraph talks about you:

> "... were in the process of discussing AB 1, the gay rights bill, when the Agency Undersecretary, A. Del Pierce, came into the room and asked what we were discussing. When it was explained to him that we were discussing AB 1 and the im-

pact it would have on the department resources if it were passed into law, he stated, quote, 'Oh, I know how to handle that problem. Just give me a machine gun." End of quote. Then in the same paragraph, "Others present at the meeting were ..." as I mentioned.

It appears that it's all tied into the quote and the meeting and him walking in the room.

MS. READER: Correct, and that's exactly what I'm saying to you with respect to had I had any idea that this event, this -- this affidavit taken as simply and in as summary a fashion as it was written at the time, and not written by me, would have been exaggerated to the degree that I have seen in the press, I certainly would have made it very clear to all of you who are Members of the Committee the context in which this event occurred, and specifically the fact that I do not recall either Mike Vader or Shirley Chilton being in that room at the time the comment was made. They may well have been in and out; I just don't recall. That was what Mr. Garcia felt -- who he felt was there.

As I say, we have had so many meetings over so many years --

SENATOR MELLO: Up until now all we had to go on was this affidavit signed under penalty of perjury.

MS. READER: Correct.

SENATOR MELLO: Executed on the first day of August, 1986.

Let me ask you a second question. You stated earlier that this statement alleged by Mr. Pierce was made before the meeting started?

MS. READER: Correct. As I recall, Mr. Pierce was late getting to the meeting. I don't recall what time the meeting was supposed to be, but as I recall he was supposed to convene the meeting and was not there. And we were having some discussion prior to the time that he walked in the room, but the comment was made as he was walking in the door.

It was not after we had formally convened the meeting with Mr. Pierce.

SENATOR MELLO: Another person who testified here at the January 28th meeting, Mr. Mark Guerra, stated that the statement was made, or alleged to be made as he heard it, after the meeting was over. He was dismantling the projector, as he stated it. He was there, and he wasn't really clear as to what the statement pertained to, but he did hear the submachine gun portion of it. He said very clearly, and you can go back and check the transcript, that it was done after the meeting while everyone was departing and he was taking down the projector.

MS. READER: Well, I can appreciate that he may have that recollection, but I don't recall there even being a projector in the room, so you know. It's been too many years ago.

SENATOR MELLO: No further questions.

CHAIRMAN ROBERTI: Senator Petris.

SENATOR PETRIS: I think the record needs to be cleared because there were comments made before about how difficult it was to reach you.

You've explained that in the letter. I don't want to leave the impression in the record that you were dodging communications --

MS. READER: Please don't. I appreciate that.

SENATOR PETRIS: I understand you had a family illness situation, and all the responsibilities were dumped on you. You work seven days a week, and you travel a lot in connection with the family business.

MS. READER: That's correct. And Nancy Michel explained to me that -- you see, I have received no correspondence from the Committee, and Nancy Michel gave me two telephone numbers she's been calling that Mr. Garcia gave her. And there are two "for sale" signs on my front lawn that have my 24-hour a day, seven day a week answering service which somebody finally called a week and a half ago.

SENATOR PETRIS: That wasn't one of them?

MS. READER: That was not one of the numbers that was given to Ms. Michel.

SENATOR PETRIS: Thank you.

CHAIRMAN ROBERTI: Any other questions?

Thank you very much, Mrs. Reader, and we appreciate your testimony.

MS. READER: Am I excused to leave the room?

CHAIRMAN ROBERTI: Yes, you are excused.

MS. READER: Thank you.

CHAIRMAN ROBERTI: We have three people who have indicated they wish to testify. We've had a great deal of testimony on the substance of Mr. Pierce's qualifications on two prior weeks, so we will ask you to keep it very short because this is really one additional hearing that we normally don't give.

So I will call Diana Harwood, Johnny Walker and Leonard Matlovich in that order.

I'll only ask for sworn testimony if they choose to testify concerning the matters of fact concerning their knowledge of Mr. Pierce's alleged statements at the meeting regarding homosexuals.

If you are not testifying as to your knowledge of that event, you don't have to been sworn in.

Please come forward.

MS. HARWOOD: Senator Roberti, I appreciate the time you've allowed me and I will try to be brief.

Members of the Senate Rules Committee and all of those that are present, I am Diana Sanchez Harwood, and I am currently National President of American G.I. Forum.

I cannot come before you and give you testimony regarding whether or not Mr. Pierce made those remarks or not at that meeting that a lot of people don't know even when was held.

I can come before you and tell you, though, that regardless of whether the person made the remark with true feelings that were antidiscriminatory (sic), or whether those

feelings were not there, the gentleman probably showed in anybody's estimation poor judgment in making any kind of remark, whether it was serious or whether it was in a joking manner. I believe that there are enough people that have come before you that have testified that the remarks were made.

I only like to emphasize to you that the character of the person that is going to serve in such capacity should not have to make anybody worry about whether or not he is going to make any bad judgment calls.

Again, it was poor judgment and in poor taste, and you should consider these types of people before you appoint them. As Hispanics we are already faced with another director of another large agency who is currently making derogatory remarks and uncalled for and unnecessary remarks. But the gentleman has already been in office, and once they're in it's even more difficult to get them out.

I represent a civil rights organization that was based because of blatant violation of a soldier's civil right and blatant discrimination. This was in 1948. A Hispanic soldier was not allowed burial in the memorial in his town in the lower Rio Grande Valley of Texas.

Now I call to you in your conscience, this is 1986, those civil rights and discrimination we hope are small. They are still very real. The problem is that it's very subtle, and it's very difficult for us to come before you and tell you they did say this, they made a sign, and et cetera.

I hope that you and your conscience will consider reality of this world, and if we want world peace, let us begin with peace within our state.

I only have one other remark to make, and that is a compliment to Mr. Roy Perez, who is a member of your staff, who has repeatedly come to the Hispanic community and told us time and time again: Do not come before the Senate Rules Committee for a witch hunt; this is not what it is all about; we do want facts.

Another state official that was put in rather a precarious position was Jamie Bailey. I spoke with her personally as well. Jamie's only recommendation to me was to tell me to think twice before I spoke, and that I was going to be under oath, and to recognize that this was a very important committee. And those were her only remarks to me.

Again, I can only refer to a memorandum from Mr. Pierce to Andres Mendez when Andres Mendez was Director of Veterans Affairs of the State of California. In that memorandum Mr. Pierce tells the Director of Veterans Affairs that he should do something other than be an advocate for veterans.

Since I represent the veterans organizations, I take issue with that. Veterans are always receiving priority. Will they receive priority if Mr. Pierce is going to be Director of the Department of Motor Vehicles?

Thank you very much.

CHAIRMAN ROBERTI: Thank you very much, Ms. Harwood.

MS. HARWOOD: Any questions?

CHAIRMAN ROBERTI: Any questions? Senator Mello.

SENATOR MELLO: I'd like to ask, you did mention there was another official in state government that was making remarks against Hispanics.

MS. HARWOOD: Pardon me? Did you want to know what department?

SENATOR MELLO: Yes, I'd like to know who the person is.

MS. HARWOOD: It's -- the agency we're working with is Employment and Development.

SENATOR MELLO: E.D.D.? That's a large agency. Would you care to give the name of the person that you're making the allegations against?

MS. HARWOOD: It's the Director and the Chairman of the Board, and the names slip my mind right now.

SENATOR MELLO: That would be Kaye Kiddoo, the Director?

MS. HARWOOD: The Director.

SENATOR MELLO: And the Chairman of the --

MS. HARWOOD: The Board, they have a Board that responds to the agency.

SENATOR MELLO: Like an advisory board?

MS. HARWOOD: Right.

SENATOR MELLO: Okay, thank you very much.

MS. HARWOOD: Thank you.

CHAIRMAN ROBERTI: Mr. Johnny Walker.

MR. WALKER: Senator, before I begin, I'd like to say that probably the information that I'm going to be giving you is hearsay as far as absolute evidence, and I don't know if it would be acceptable to you or not.

CHAIRMAN ROBERTI: What is it in regard to?

MR. WALKER: I know what -- I know what myself, personally, what it's about. It's -- practically every one of us do. It's a --

CHAIRMAN ROBERTI: Do you want to come forward momentarily, Mr. Walker.

(Thereupon a brief discussion was held off the record.)

CHAIRMAN ROBERTI: Yes, what Mr. Walker wants to testify to he indicated has appeared in the press. That doesn't mean it necessarily is true, but it does mean that it's substantial enough to raise.

Of course, Mr. Pierce will be given the opportunity to rebut.

MR. WALKER: Yes, thank you, Senator.

After leaving the hearing last week, I went back and since then I've been associated with my comrades in Veterans of Foreign War.

There have been about four or five of them that came to me and asked me a question, a question that I couldn't answer. And the question was: Was I aware that Mr. Pierce as a veteran had made -- he's a California veteran -- he'd made an application for a Cal Vet loan. And his Cal Vet loan was -- went through, was approved. And their question was why was it approved in 45 days when there were 2500 applicants ahead of him?

He is neither a wounded veteran or a disabled veteran. And why was he shoved through in 44 days or 45 days, and the 2500

applications that had been made prior to his were held up until his went through in front of them?

CHAIRMAN ROBERTI: Is that the substance of your testimony, Mr. Walker?

MR. WALKER: Yes, that's it.

CHAIRMAN ROBERTI: Any questions of Mr. Walker? Hearing none, thank you very much, Mr. Walker.

MR. WALKER: Thank you.

CHAIRMAN ROBERTI: Finally Mr. Leonard Matlovich.

Indicate your name and if you represent anyone or if you're speaking for yourself.

MR. MATLOVICH: Leonard Matlovich, San Francisco, Alexander Hamilton American Legion.

I spent 12 years in the United States Air Force, 3 years in Vietnam.

We in the lesbian and gay community are very, very interested in protecting people's jobs and careers. I was thrown out of the United States Air Force for being gay, for something that I am.

I owned a restaurant for three years. Any time a customer of mine would come in and complain, I ignored the first complaint. And had there only been one witness against Mr. Pierce today, I wouldn't be here today. And when two customers complained about something, I listened. And when three customers complained, I took action.

We have three witnesses who say they heard Mr. Pierce make the remarks.

I remind this Committee about Earl Butts, a man who had given years and years and years of dedication to the United States. Off the cuff statement one day on an airplane to a reporter, and his career ended. I remind this Committee about that.

We entrust in our public figures a lot of faith and a lot of hope. And we in the lesbian and gay community today, we are the subjects -- we're the butts of the jokes today of the '80s and '90s. Had this statement been made about Blacks, about Browns, Yellows, Reds, I don't think we'd be having a hearing today. But the statement was made. I feel it was or I wouldn't be here today, because I look after the rights of people's employment and career.

And Mr. Pierce may be the most faithful person in the world to human rights and human dignity, but he's also in the public eye. And I ask this Committee, I ask this hearing not to confirm his nomination.

Thank you.

CHAIRMAN ROBERTI: Thank you, Mr. Matlovich.

Any questions of Mr. Matlovich? Senator Petris.

SENATOR PETRIS: You make it appear a lot simpler than it is. I want to give you some idea how it is being up here.

First of all, your analogy, you didn't tell us how many customers you had. If you only had three --

(Laughter.)

MR. MATLOVICH: No, I wouldn't have been in business the number of years I was in business.

SENATOR PETRIS: I notice you say you're not in it any more.

MR. MATLOVICH: The two happiest days in a restaurant owner's life is the day you buy it and the day you sell it.

SENATOR PETRIS: That's what I'm told.

MR. MATLOVICH: It's true; it's true.

SENATOR PETRIS: As for Mr. Butts, he made a lot of comments. That one was the one that broke the camel's back. And it wasn't too prudent when he made his off the cuff remarks in a plane-load of reporters.

(Laughter.)

SENATOR PETRIS: At any rate, let me ask you a hypothetical. Suppose first of all we have disputed testimony here, so it isn't that clear.

Secondly, suppose it were not disputed. Suppose everybody in the room said: Yeah, he made the comment, but like the lady here said, it wasn't malicious; it wasn't intended; it was obviously in the context that it was one of those things that showed very bad judgment, shouldn't have been said, but that's the context.

And suppose behind that you have a 20-year unblemished record. These are just assumptions.

Would you advocate rejection on the basis of that one incident? Assuming now for purposes of this discussion that there's just that one incident in 20 or whatever number of years of service.

MR. MATLOVICH: Yes, I would because I don't know what his real private thoughts would be, and if there was an issue where he had to rule in favor or against a gay person or a lesbian, I would think there may be a prejudice involved in his decision.

Again, we're talking about a public figure. We're talking about someone who -- who has the public trust.

You know, it's a horrible thing when you're an elected official or when you're an appointed official, and you make that one mistake and your career's over with. But maybe we demand too much of our public officials. I don't know.

But I feel --

SENATOR PETRIS: There are certain examples. Scranton of Pennsylvania said he'd been brainwashed by somebody; that was the end of his career and he would have had a good shot at the Presidency.

MR. MATLOVICH: Right.

SENATOR PETRIS: So I understand what you're saying.

One of the letters we have received is from a person that's known Mr. Pierce a long time, worked with him over the years, who is gay.

MR. MATLOVICH: I read the same letter.

SENATOR PETRIS: You read the letter?

MR. MATLOVICH: Right.

SENATOR PETRIS: One of the things that impresses me is that according to him, that fact wasn't known to anybody. And there would have been plenty of opportunities over these years to

directly hear derogatory comments of that kind, and he says there never were any at any time.

So we get back to the proposition that, assuming that the record is unblemished and you have that one comment, in that context, do you still feel the answer ought to be no?

MR. MATLOVICH: I absolutely do.

And that's why I said just awhile ago, Mr. Pierce in fact may be an individual who really believes in human rights, but, you know, he's also a public official. And when you make that off the cuff statement, you lose all the trust that the people have in you. I mean, you just lose it. It's gone.

It's a big burden on one's shoulders, but it's a burden nonetheless.

SENATOR PETRIS: What kind of business are you in now? I'm just curious.

MR. MATLOVICH: Right now I sell cars, S & C Ford in San Francisco.

SENATOR PETRIS: Thank you.

CHAIRMAN ROBERTI: Mr. Pierce, you may rebut.

MR. PIERCE: Thank you, Mr. Chairman, Senators.

There's been much discussion regarding the statement, but I think I'll confine my rebuttal, as it's called, to two issues that were brought up today. One, the issue of not being in support of veterans.

I think we dealt with this once before, but the memo that's been alluded to as being a statement by me of telling the Department of Veterans Affairs not to be advocates for veterans

has been taken clearly out of context. That memorandum was merely to clarify a presentation that the Veterans Department was supposed to make to the Governor, and nothing more than restating what he had asked for, which was a presentation on the programs that the Department was currently providing veterans.

With regard to receiving preferential treatment in a Cal Vet loan, I am a California veteran. And I do have a Cal Vet loan. I applied for my loan in the normal manner by going out to the field office that handles the property in that area and made application.

I did not ask for any favoritism. I believe this Committee has investigated that in concert with the Department, and there's a report before you.

I did learn a lot about the Cal Vet loan process by being an applicant myself. And I sure hope in the future that it's a lot easier to get a loan because it's a very complicated process. I've bought a lot of property in my day, and that's probably the hardest loan I ever got.

But I believe you have the information before you in your packet that clearly sets forth the manner in which I received that loan. I did not ask for, nor did I receive, any preferential treatment.

Other than that, I was under the impression today that this was for vote only, or I would have brought some additional people that I think could provide some information regarding my character and regarding my conduct and performance over my 20 years of public service.

I again point back to my record and assure you gentlemen that I am a staunch advocate for human rights and a good administrator, and certainly can provide a worthy performance as the Director of the Department of Motor Vehicles.

CHAIRMAN ROBERTI: Thank you very much, Mr. Pierce.

Any questions? Senator Petris.

SENATOR PETRIS: We got the report on the loan. I don't remember the details.

Were you the head of the Department at the time?

MR. PIERCE: No, sir.

SENATOR PETRIS: Were you in the Department?

MR. PIERCE: No, I was in the Agency.

SENATOR PETRIS: So you weren't even in that --

MR. PIERCE: That's right.

SENATOR PETRIS: I was going to say, if you were the head and you filed in some field office, if I were the employee there --

(Laughter.)

SENATOR PETRIS: Well, let's face it. I think we ought to face reality here.

Suppose you're in a commercial private business, and one of your jobs is to make travel arrangements for people who travel for the company. And you've got about six requests. And along comes the president of the company who says, "I'm going to Chicago; book me." Who gets on first?

That's natural.

MR. PIERCE: That's correct.

SENATOR PETRIS: And if I were an employee and the big boss came in and filed, I'd kind of move that, whether he said anything or not. Even if he said, "Hey, I don't want any preferential treatment," I'd move it. He may change his mind the next day. Or if he gets caught up in a normal tangle, it would seem like an eternity to the boss.

Anyway, you were not head, and you were not even in the Department at the time.

MR. PIERCE: No, I was in the Agency. And I applied the normal way.

I'm worrying about that. In June my driver's license is up, and I'm not sure how to approach it.

(Laughter.)

CHAIRMAN ROBERTI: Any further questions?

I'd like to point out that we have on file a letter from the Log Cabin Club, which is an organization of gays in politics, indicating their support for Mr. Pierce's confirmation. And also the letter on file, which I think Senator Petris alluded to, from a gentleman who was in a high ranking position of state service who was gay at the time and no one knew it, and he makes a very strong endorsement of Mr. Pierce and his confirmation, and indicates that certainly there was plenty of opportunity for him to hear comments that Mr. Pierce might have made that were hostile to gays, and the fact is that he knows of none.

I'm introducing those into the record.

Do I hear a motion?

SENATOR MELLO: Mr. Chairman, I'd like to make a motion. But before I do, I'd just like to state briefly, as others have said, Senator Petris and yourself, how difficult this hearing has been, and how controversial and contradictory a lot of the testimony has been.

For an example, I thought, sort of being naive I guess, looking back, that when people were put under oath, suddenly the question would clarify, and there'd be a clear answer before us.

Mr. Pierce, Mr. Kelly and Mrs. Chilton all said categorically that none of these statements were made at any time and in that room that was alleged to. Mr. Guerra, Ms. Reader and Garcia all say that the statements were made. And later, Betty Reader indicated it was made before the meeting sometime in December; Mark Guerra said it was made after the meeting while he was taking the projector down.

I think some of the witnesses tried to put us in a category of either being pro one way or pro the other. Quite frankly, I voted for AB 1 as a way of trying to eliminate discrimination. And I still would vote for it and hope some day the Governor would sign it and it would become law of the State of California.

Mr. Walker came up with, you know, good intentions, but he made a statement that what he was about to say was hearsay.

I think my motion will be -- and I'll announce it very shortly -- because I do think the Pierce issue should be resolved on the Floor by the Senate, even though a lot of allegations were made. But if we were to take this beyond a reasonable doubt, I

don't think those making the allegations have clearly proved their allegations, in my mind especially. And even though I feel, you know, that maybe there was some loose talk and some of these allegations were made, but if you look back at the record, you cannot find a clear, clear decision.

So my motion will be that Mr. Pierce's confirmation go to the Floor without recommendation, and that it be decided by the full Senate.

CHAIRMAN ROBERTI: The motion is before us.

On the motion I would like to make a statement. Senator, I appreciate your point. I tend to vote against the motion, and I am voting as an individual.

I've heard contradictory testimony, and it become very difficult to make a decision, but that's what we're here for. We have to make decisions.

And frankly, I think the comment was made. Whether you remember making the comment or not is, I guess, a matter for disputation, but I think the comment was made. And you've indicated under oath that you did not make the comment.

As far as your record in the Department of Motor Vehicles, I think it's outstanding. Well, very good at least. For outstanding, I guess you have to be around a little bit longer to get that approbation, but I would say it's very good.

And I have heard comments made, and letters written, and telephone calls taken that you have a positive affirmative action program.

All that said and done, I think the comment was made, and I think you yourself have indicated under oath that it wasn't made.

The people who have come before us, especially Mr. Guerra and certainly Ms. Reader, did not come before us as witnesses with any special ax to grind. They came before us as citizens who were doing their duty and answering the process of this Committee.

What impressed me especially was the comment that was made when I asked you, after Mr. Guerra testified, did you even use the word "submachine gun", or "machine gun" in any context, and you said no, you hadn't.

I don't feel Mr. Guerra especially and also Ms. Reader, whose recollections are a little bit vaguer, were hallucinating.

So I regret the vote I feel I, in conscience, have to cast. And once again, I'm saying this because there is contradictory testimony. And so I am acting as a juror, so to speak, and trying to ferret all this out. And people in good conscience, I'm sure, are going to hear the testimony differently, or may hear the testimony differently from how I hear it.

Adding to the whole mix also is the opposition of the G.I. Forum, which is an organization of long-standing respect, of high efficiency in the Latin-American community, and known for its dedication and hard work rather than for its political axes to grind. And there is no organization that I have more respect for than the G.I. Forum. I'm not making that as a political

statement at all. I'm just saying it as a matter of fact. And their opposition weighs in my mind as well.

Any further observations? Senator Petris.

SENATOR PETRIS: As I indicated earlier, there's been supporting statements and opposing.

If this goes through, I'm going to ask people who have contacted my office in opposition who are employees in the Department, probably none that you know about at all, but the word gets out sooner or later. I want a pledge, if you are confirmed, that there won't be any retaliation.

We've gone through this before. We've had promises. Some have been kept and some haven't.

I think it takes a lot of courage on the part of employees to make negative statements about people higher up. Things can happen to them with respect to their jobs.

And I would like you to know that there are people like that, I've told you that before without giving you any names. And they may never become known to you, but if there's a firing or demotion of people within the Department which apparently is related to this hearing at some time in the future, assuming that there is confirmation, I'll be coming back to you and ask for the reasons and so forth.

I know you probably consider that an insult, but I've gone round and round with people here in other agencies. We had one hearing that went on for a long time, many, many days. And the Director sat there and made an absolute pledge, and within that same week people were transferred or fired.

If I hear that, I'm going to really come down on the whole Department if it appears to be, you know, if that's the reason.

I guess what I'm asking you is, if you're confirmed, and it comes to your attention that Mr. Jones is one of those who urged us not to confirm, and he happens to be in your jurisdiction, are you going to jump on him for that reason?

MR. PIERCE: No.

SENATOR PETRIS: Okay, that's what I want to know.

Thank you.

CHAIRMAN ROBERTI: There is a motion before us by Senator Mello that Mr. Pierce's confirmation be sent to the Floor without recommendation.

Secretary will call the roll.

SECRETARY WEBB: Senator Doolittle.

SENATOR DOOLITTLE: Aye.

SECRETARY WEBB: Senator Mello.

SENATOR MELLO: Aye.

SECRETARY WEBB: Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Senator Craven. Senator Roberti.

CHAIRMAN ROBERTI: No.

The vote is three to one. The confirmation is moved to the Floor without recommendation.

Because of the time constraints, I had indicated last week that in fairness to whatever the majority of the Committee is, which then becomes the will of the Committee, we should take it up before the deadline, which is Friday the 13th.

There was some consideration -- I'm opening this up to the Committee -- there was some concern that Senator Doolittle would not be here if it was presented to us on the Floor on Friday the 13th; however, I would point out at this point that Senator Craven's not here today.

My preference would be that we take it up on the 13th, but I'm subject to the consideration of the Committee. We are not prejudicing the nominee because he's going to be short a vote at least one way or the other, I would think. I would think in the aspect of noticing such, I would hope that people have a chance, both in support and in opposition, to advise the Members what the issues are.

That's my personal position, but I'm willing to listen to the vote of the Committee as to what they want the recommendation to be.

Senator Mello.

SENATOR MELLO: Mr. Chairman, I think the fact that I'll be absent on Friday, and I know Senator Doolittle and others will be, we're just about nearing the last three or four days of the whole year.

I would like to bring it up today. We have Session starting when we adjourn here, and let the issue go up or down before the full Senate this afternoon.

CHAIRMAN ROBERTI: Do you want to put that in a motion?

SENATOR MELLO: Yes, I would so move that this issue be taken to the Floor and be taken up without reference to file.

CHAIRMAN ROBERTI: Senator Mello is moving the Committee recommend that the nomination of Mr. Pierce be taken up without reference to committee, print or file.

Any further discussion on that? This is a recommendation to the Floor; Secretary will call the roll.

SECRETARY WEBB: Senator Doolittle.

SENATOR DOOLITTLE: Aye.

SECRETARY WEBB: Senator Mello.

SENATOR MELLO: Aye.

SECRETARY WEBB: Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Senator Craven. Senator Roberti.

CHAIRMAN ROBERTI: No.

The vote is three to one. We'll take it up on the Floor shortly.

(Thereupon this portion of the Senate Rules Committee hearing was terminated at approximately 2:57 P.M.)

--oo0oo--

CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 10th day of February, 1987.

Evelyn Mizak
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Shorthand Reporter

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HEARING

SENATE RULES COMMITTEE

STATE OF CALIFORNIA

STATE CAPITOL

ROOM 113

SACRAMENTO, CALIFORNIA

WEDNESDAY, MAY 20, 1987

1:50 P.M.

Reported by:

Evelyn Mizak
Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR JIM ELLIS

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

MEMBERS ABSENT

NONE

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Appointments

ALSO PRESENT

MICHAEL J. BOCCHICCHIO, State Architect

LEONARD CHASTAIN, Superintendent
California Rehabilitation Center at Norco

CAROLE A. HOOD, Chief Deputy Director
Department of Social Services

ROBERT M. REES, Superintendent
Deuel Vocational Institution

I N D E X

	Page
Proceedings	1
Governor's Appointees:	
MICHAEL J. BOCCHICCHIO State Architect	1
Motion	2
Committee Action	3
LEONARD CHASTAIN, Superintendent California Rehabilitation Center at Norco	3
Motion	4
Committee Action	4
CAROLE A. HOOD, Chief Deputy Director Department of Social Services	5
Questions by SENATOR PETRIS re:	
Role of Chief Deputy Director	6
Policy Decisinos	7
Homeless Programs	8
Homeless Families	9
Housing for Homeless	10
Pending Proposal	11
Cost of Proposal	11
Percentage of Homeless Covered	11
Other Homeless Programs	12
State Subsidies	13
New Housing Construction for Homeless	14
Training Programs	15
Possible Conflict with MR. QUATSHA	15
Hanson Decision	19
Licensing of Right Way Home Finders	20

I N D E X (Continued)

	Page
Internal Investigation	22
Lead Person on Homeless Issues	23
Motion	24
Committee Action	25
Recess	25
ROBERT M. REES, Superintendent Deuel Vocational Institution	25
Questions by CHAIRMAN ROBERTI re:	
Number of Inmates in Programs	26
Overcrowding Problems	27
Questions by SENATOR CRAVEN re:	
Location of Deuel	27
Accessibility of Psychological Counseling	28
Prision Manufacturing	28
Wood Furniture Construction	29
Questions by CHAIRMAN ROBERTI re:	
Criteria for Inmate Placement	29
Security Level of Institution	30
Motion	31
Committee Action	31
Termination of Proceedings	31
Certificate of Reporter	32

P R O C E E D I N G S

--oo0oo--

CHAIRMAN ROBERTI: Governor's Appointees appearing today, Michael J. Bocchicchio, State Architect, please come forward, take a seat.

Mr. Bocchicchio.

MR. BOCCHICCHIO: Yes, Michael J. Bocchicchio.

CHAIRMAN ROBERTI: Please tell us why you feel you're qualified to assume this position? That's what we ask all the Governor's Appointees.

MR. BOCCHICCHIO: Mr. Chairman and Members of the Committee, I have over 25 years experience in the field of architecture, engineering, construction and management, and that has been in the area of private practice as an architect. I have had administrative experience as a university administrator at U.S.C. as university architect and university director. Experience as a corporate manager as Southern California Regional Director for a major health care organization for their design, construction, property acquisition and long-range planning. And over those particular years, I have managed major capital outlay programs for those organizations which have exceeded at times over $200 million per year, and also have managed staffs in excess of 550 people larger than the staff that I have been designated to manage here within the Office of the State Architect.

In each career change that has taken place in the past 25 to 27 years, it has always been for a higher position, one of promotion, and has always been by outside recruitment.

I am a licensed architect. I have a degree in architecture, and I have postgraduate work from the Stanford Business School and also from the Graduate School of Business Administration at U.S.C.

CHAIRMAN ROBERTI: Any further discussion or debate? Senator Petris.

SENATOR PETRIS: I have a very important question that I think would be of interest to the Chair.

I'm looking over your splendid qualifications here, and I start with the name. I just want to know if that's a derivative in someway or other of the great Boccaccio?

MR. BOCCHICCHIO: No, I'm afraid there's no relationship there.

SENATOR PETRIS: That's all right, just hoping there was, that's all.

SENATOR CRAVEN: Maybe it's related to bocci, which is a very important Italian game.

Mr. Chairman, is there anyone in the audience who wishes to speak?

CHAIRMAN ROBERTI: Anyone in the audience wishing to testify in opposition to Mr. Bocchicchio?

SENATOR CRAVEN: There being none, Mr. Chairman, I would like to move that Mr. Bocchicchio's nomination go to the Floor.

CHAIRMAN ROBERTI: Senator Craven moves Mr. Bocchicchio's nomination be recommended to the Floor.

Secretary will call the roll.

SECRETARY WEBB: Senator Ellis.

SENATOR ELLIS: Aye.

SECRETARY WEBB: Senator Mello. Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is four to nothing; the recommendation is made to the Floor.

Congratulations.

MR. BOCCHICCHIO: Thank you very much.

CHAIRMAN ROBERTI: It will probably be taken up in about two weeks.

MR. BOCCHICCHIO: Thank you.

CHAIRMAN ROBERTI: Mr. Leonard Chastain, Superintendent of the California Rehabilitation Center at Norco.

MR. CHASTAIN: Mr. Chairman, Members of the Committee, I'm Leonard Chastain, currently Superintendent of the California Rehabilitation Center at Norco.

CHAIRMAN ROBERTI: We'll ask you the same question we ask the other Governor's Appointees: Why do you feel you're qualified to assume this position?

MR. CHASTAIN: I'm a 31-year career employee with the Department of Corrections, having worked the last 19 years in the manager or supervisory role. I've worked in five of the state's major institutions, three of those twice.

I believe that I possess the experience, motivation, and provide a type of leadership that inspires others to perform at their best.

I've been at the California Rehabilitation Center at Norco now since November of 1985, 11 months of that in an acting capacity, and I was appointed in October of '86 by the Governor.

CHAIRMAN ROBERTI: Is there any opposition in the audience to Mr. Chastain? Seeing none, are there any questions?

SENATOR CRAVEN: I move Mr. Chastain's confirmation to the Floor.

CHAIRMAN ROBERTI: Senator Craven moves Mr. Chastain's nomination to the Floor.

Secretary will call the roll.

SECRETARY WEBB: Senator Ellis.

SENATOR ELLIS: Aye.

SECRETARY WEBB: Senator Mello. Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is four to nothing; the motion is adopted.

MR. CHASTAIN: Thank you.

CHAIRMAN ROBERTI: Congratulations.

Ms. Carole A. Hood, Chief Deputy Director of the Department of Social Services.

Ms. Hood, we'll ask you what we ask the other Governor's Appointees, and that is why you feel you're qualified to assume this position?

MS. HOOD: Since unlike Mr. Kopp this isn't my maiden visit, I'll be very brief in terms of my comments on my background.

The last time I had indicated that I thought I was qualified because of educational background, work experience and personal characteristics.

By educational background, I am a sociologist by training, and my areas of specialty were in sociology of the family. I have taught at U.C. Davis for two years, and when I left there I started in the state service.

I have been in state service for 12 years and started as a student and worked my way up through to the current position, which is Chief Deputy Director of the Department of Social Services. I was in CEA positions for 4 years prior to this current appointment.

In terms of personal characteristics, I think that I have certainly the work ethic and the diligence to stay with this job, and I am very open to suggestions on ways that we can better manage the Department of Social Services.

CHAIRMAN ROBERTI: Thank you, Ms. Hood.

Are there any questions of Ms. Hood? Senator Petris.

SENATOR PETRIS: Yes, Mr. Chairman. I'm the one who asked that the matter be put back on the agenda. We had already acted on this, and I feel I owe Ms. Hood an explanation. I meant to call her and tell her.

But anyway, we have, as you probably know, a pretty thorough treatment of each nominee by our staff which submits a summary background of the agency and the particular function of the person involved and some suggested questions.

Our problem was that we were so enthralled by you personally and your testimony, we didn't get into these questions.

(Laughter.)

MS. HOOD: Can we do that again?

(Laughter.)

SENATOR PETRIS: So I want to go back into this.

MS. HOOD: That's fine.

SENATOR PETRIS: This is rather extensive, and I don't plan to take a lot of time, but there are some things that I personally am interested in and some that are generated by the proposal here.

First of all, as I understand it, as Chief Deputy you kind of run the daily activities of the Department and you oversee the 10 Deputy -- what are they called?

MS. HOOD: Ten Deputy Directors.

SENATOR PETRIS: You supervise all 10 of the Deputy Directors.

MS. HOOD: Yes.

SENATOR PETRIS: So you're the Chief Deputy.

MS. HOOD: Yes.

SENATOR PETRIS: In effect, you're responsible for seeing to it that that shop runs smoothly and does its job.

Are you also responsible for trying to create policy and be innovative in recommending to the Chief of the Agency, and maybe to the Governor, additional things, or are you just strictly an administrator that doesn't worry about policy decisions?

MS. HOOD: Well, I wouldn't really say that. I mean, I am very much involved in terms of the daily operations of the Department, but I would like to think that I am receptive to ideas from Deputies and from others, and I do try to forward those through the Director and through the Agency to the Governor's Office in some cases.

SENATOR PETRIS: Is that encouraged among people who work for the Department, ways to improve ways of doing things, more than just a suggestion box where you drop something in there?

MS. HOOD: No, I would say that that's absolutely true. In fact, we have had a couple of sessions with our Deputy Directors to try and come up with different ways of doing things. In fact, we're planning another session within the next two weeks where we're going to do that again.

One of the things that I am concerned about is that we have given up positions over the years, and necessarily we haven't given up some of the functions that go along with that. We're going to take another look at everything that the Department is doing to see if there's room to -- to see if things are still worthwhile to be doing, and maybe we can discontinue some things and free up some staff times to get into some more innovative and forward thinking areas.

SENATOR PETRIS: I notice you've had a lot of experience in state service, beginning in '76 with the Department of Finance as an analyst, and then you were in Planning and Research for a brief time in the Governor's Office, and then Alcohol and Drug program and so forth, a lot of different assignments in different parts of the Executive Branch.

The first area I'm interested in is the homeless. I think I mentioned it briefly last time, but we really didn't go into it.

There's a lot of legislation. Some legislation pending, and the Governor's made some kind of provision in the budget, but when I look at the need and the increasing visibility because of the media attention on the homeless, I'd like to get a little more information from you as to what your shop is doing with respect to the homeless.

Now, as I understand it, your Department is limiting itself at the present time just to children. You just take care of homeless children and no one else. Or that was happening until there was some litigation and the Court decided that that's contrary to the state public policy of keeping families together.

I'm not familiar with the case, so what is the present policy? Number One, is there a program for the homeless within the Agency? And Number Two, if there is, does it encompass entire families, or is it still separated?

MS. HOOD: There is not a specific program within the Department that deals just with homeless. We have all of the income maintenance programs, and so many of those programs do

serve the homeless, like SSI-SSP, and AFDC, and we have the food stamp program and teeth out program as well for food issues.

We -- the lawsuit that you're talking about was called the Hanson case, and really the issue involved there, and I'm going to oversimplify a little bit because I'm not an attorney so I don't know all of the legal ramifications, but the issue was that the plaintiffs were alleging that Child Welfare Services, and in particular emergency shelter care, should be available to homeless families, intact families.

Our position that the intent of Child Welfare Services is to treat abused and neglected children. So, children who have been taken away from their parents, or their caretakers, or their guardians because they've been abused.

So, we think it's a different program that the plaintiffs are talking about. What we have said and what we've argued in court is that we have other programs that deal with families, and in particular we have the AFDC program.

SENATOR PETRIS: That's not in your Department, though.

MS. HOOD: Yes, yes.

SENATOR PETRIS: It is?

MS. HOOD: Yes. The problem --

SENATOR PETRIS: Is that other program being used to keep families together? When you have an entire family that's homeless, are they treated as a unit?

MS. HOOD: Yes, they are. I mean, AFDC is a financial program. I mean, it provides a basic standard of living, shelter and food and clothing.

The issue, though, is that we still have homeless families, and there must be something wrong in terms of people linking up to AFDC, otherwise we wouldn't see the people in the streets.

What we did do was go back and review all of our regulations and policies in AFDC to find out if there were any barriers that were preventing homeless families from getting into that income maintenance program. And we did come up with some alternatives, and there is an alternative that essentially would get families into permanent housing that is being considered now within the administration, and it is an expansion of the AFDC program.

SENATOR PETRIS: How is that proposed to be done? Where is the housing that they're going to be using?

MS. HOOD: Well, Housing and Community Development is clearly the one that has the lead in terms of developing more low income housing.

What we will do is provide added financial support so that people can get into housing. We've found really, Senator, that the problem was that homeless families in many cases didn't have the resources to pay first and last month's rent and the utility deposits.

So, with the option that we're looking at, we would pay last month's rent and deposits on utilities so that people could get into permanent housing, and really we think that is the purpose of AFDC.

SENATOR PETRIS: When is that going into effect?

MS. HOOD: Well, we're still reviewing that within the administration at this point. I'm very optimistic that it will be approved. It would be through legislation and then --

SENATOR PETRIS: Is there a bill pending now?

MS. HOOD: There is not at this point. We do have proposals drafted.

SENATOR PETRIS: Is there money in the budget?

MS. HOOD: No, the money would have to be in the bill.

SENATOR PETRIS: How much?

MS. HOOD: The total cost of something like that is about $38 million and about 17 million General Fund.

SENATOR PETRIS: What part of the need would that cover? Would that take care of all the homeless people?

MS. HOOD: Well, this would deal with just homeless families.

SENATOR PETRIS: With children.

MS. HOOD: With children.

SENATOR PETRIS: What percentage of the total are families?

MS. HOOD: There's been so many different estimates and we in fact --

SENATOR PETRIS: That's why I asked you.

MS. HOOD: We, in fact, did our own survey of county welfare departments. We think about a third of the homeless people are families, and so I think think the caseload that we estimated was about 30,000.

SENATOR PETRIS: Now, what program if any do you have for other homeless who aren't attached to a family?

MS. HOOD: Well, we have the other income maintenance programs for adults, so we have SSI-SSP, and then at the county level there's general relief.

Other than that, we have some specialized programs not within my Department within other departments like Mental Health that really target more onto specific causes. So, Mental Health had $20 million for special programs, plus money for residential care for the mentally ill who are also homeless.

SENATOR PETRIS: Can you walk me through a typical case? I'm trying to see how the state is equipping itself to deal with the problem.

I'm discovered as an individual to be totally homeless and without resources. I'm not married; I have no children. Don't have any skills. I can't seem to get a job or hold one. So I'm one of those persons that we read about all the time, and I turn up on your radar screen somewhere.

What happens to me? Does somebody take me by the hand and give me an application form, or take me into your Department, or send me to the county? How does that work?

MS. HOOD: The likely point of entry could be at the county level. The counties do administer the SSI-SSP program and general relief.

Probably either the person would show up at a county welfare department, or at a homeless shelter, or a feeding organization of some sort, you know, Salvation Army or Red Cross, or something like that.

Different private organizations around the state, you know, operate differently. Generally, from my visits out there, they tend to have people on staff who are specialists in income maintenance and different -- you know, have knowledge of resources that are available.

And counties do it differently. Counties may actually have staff at the shelters, and so does the Social Security Administration who pays a large amount of the SSI-SSP program. They might have people at stations who actually take applications.

SENATOR PETRIS: So you may not get any notice of it at all.

MS. HOOD: Not at my level, I wouldn't, no.

SENATOR PETRIS: Or anywhere at the state level for that matter. It would all be either county, or private, or a combination of the two?

MS. HOOD: Yes.

SENATOR PETRIS: Would there be subsidies from the state to any of those agencies?

MS. HOOD: No, there hasn't been, not from my Department, but some of the things that we've been talking about is trying to find out just what we can do. And we've been asked to provide technical assistance in terms of sharing our knowledge about how some of these shelters work with other shelters, and also they've asked form some help in some cases. So we're in the process now of helping the homeless coalition to update their directory through our county welfare departments in kind of technical assistance and information sharing.

SENATOR PETRIS: Every community that I've checked that has a homeless problem is short of money. They have a program, they have something in place, they have a cooperative effort with the private people, the nonprofit groups, but not enough money to accomplish the purpose. And they have a pretty good inventory on how many people they think are out there.

MS. HOOD: Yeah, there is a very extensive network at the local level. What we're trying to do is to figure out just, you know, what it is that we can do to help. Obviously we have the one major proposal going, but in terms of other dollars, we haven't proposed anything at this point.

SENATOR PETRIS: In terms of family again, shelter, are you planning new construction through the Housing Agency?

MS. HOOD: Yes, Housing is, as I understand it --

SENATOR PETRIS: How many units are we talking about?

MS. HOOD: I don't know. That would be through the other department.

I'm aware of it because we do have a centralized effort within the administration, so we are on working groups, the homeless working group, that is lead by the Health and Welfare Agency and Business and Transportation.

SENATOR PETRIS: I have a bill on that that's about a hundred million for housing of all kinds that includes homeless, it includes some services to the homeless by way of training, perhaps, trying to get them into a job situation.

MS. HOOD: Yeah, I saw some of that.

SENATOR PETRIS: Are you doing anything along those lines?

MS. HOOD: No, some of our counterparts are. I saw that JTPA had some different training programs that they're funding.

SENATOR PETRIS: Are they in place?

MS. HOOD: Pardon me?

SENATOR PETRIS: Are they in place, those programs?

MS. HOOD: Yes, different locations around the state doing different things. Some of them are training in some very specialized areas and some with more how to get a job type of approach.

SENATOR PETRIS: We went into this second subject briefly. I think I asked you, or maybe Senator Mello asked you, about a problem that might be thrust at you which is not of your making at all but which involves a conflict of your boss and her spouse by virtue of the fact that he was formerly a Deputy Director but now he's out in the private field and he has clients who deal with the state.

I don't recall how much we went into it, but I thought it was very brief, so I want to ask you a couple questions on that.

Ms. McMahon's husband, John Qatsha -- how's that pronounced?

MS. HOOD: Caht-cha.

SENATOR PETRIS: John Qatsha formerly was in charge of the Community Care Licensing and so forth, I think.

MS. HOOD: No, he was formerly in my position. He was the Chief Deputy Director for the Department.

CHAIRMAN ROBERTI: Nor is she married to him.

MS. HOOD: No, and my poor husband, I have to say I've been married for 10 years. He was most effected.

(Laughter.)

CHAIRMAN ROBERTI: When you were up here last I asked you that.

SENATOR PETRIS: Yes, I remember that. You established that last time.

So let the record show that that's still the case.

MS. HOOD: Yes.

(Laughter.)

MS. HOOD: I will be home tonight, too.

SENATOR PETRIS: Now, as I understand it, Mr. Qatsha now represents several groups that do business with the Department, including organizations represented on the Foster Care Rate Advisory Board, an organization called Vision Quest which operates, it says here, controversial foster care programs in other states and currently is seeking California license.

So my question is, here's your boss who has to maintain peace and harmony at home, who presides over a department which deals in this field, entered from time to time by her husband. Now so far everything's okay, but now we get down to the nitty-gritty and he is fighting for a client who may be the best home in the world, but best organization in the world, may be the poorest, seeking some kind of appointment, contract, whatever it

happens to be to provide a service for the state for compensation.

You have to act on those ultimately in some manner or other or review them. Do they come to your attention?

MS. HOOD: No, they don't.

SENATOR PETRIS: They don't?

MS. HOOD: No.

Really the licensing application, which is the primary concern I think, would be dealt with by the Deputy Director for Community Care Licensing.

SENATOR PETRIS: That's one of the 10 Directors that you supervise.

MS. HOOD: That's right. It would be very --

SENATOR PETRIS: What if that Director came to you and said, "I've got a hot potato here. Here's two applications. Mr. Qatsha represents two outfits, two different situations. One of them is terrific; we'd like to see him get it. This other one stinks, but I don't want to be the one to say no because I know who the ultimate boss is up there," and they dump it in your lap. That's a scenario that's not unlikely or impossible.

How would you deal with that?

MS. HOOD: Well, I think it's true.

SENATOR PETRIS: First of all, has it happened yet?

MS. HOOD: No, it hasn't happened. But, I mean, I'm fully aware of the potential for that. And the Director and I have talked about it many, many times in terms of how we handle that.

The Director has designated to me any decision that might come to me relating to her husband's business, solely to me. And there happens to be only two contractors, Vision Quest is not one of them, two others that I don't know whether they have applications pending or not.

I have made that known to the Deputies who they are. They know that if there is an issue that is raised dealing with any of those providers that they should deal with me.

I think that we have discussed with the Deputies enough. I think everybody is very well in tune with the fact that there could be the potential or the appearance of a conflict. And I think because of that awareness, it hasn't happened. I haven't had a problem with it.

I don't feel any pressure personally, and I certainly feel that I would have the support to confer with the Agency if I felt that pressure.

SENATOR PETRIS: So you think the fact that you've met with the boss and kind of set a policy, I assume that word has probably been put out to all your Deputies, as you said?

MS. HOOD: Yes.

SENATOR PETRIS: And that undoubtedly had some kind of an impact to forestall any possible situation.

Have you had any similar meetings with her husband?

MS. HOOD: No, I have not. I have never --

SENATOR PETRIS: He hasn't come before you officially?

MS. HOOD: No.

SENATOR PETRIS: To go back to the Hanson case, following the court decision your department sent a letter to all the counties revoking the previous policy in order to comply with the court.

MS. HOOD: Yes.

SENATOR PETRIS: Was there anything further in a positive way done to carry out the new policy in the counties, other than revoking the old one?

MS. HOOD: No, what we have done is to look at other options, and that really is the proposal that I mentioned earlier dealing with AFDC.

The injunction itself was determined to be prohibitory, which meant that the judge in this case did not feel that there as a need to clarify anything because he was simply stopping doing something that apparently we were doing.

SENATOR PETRIS: But doesn't that leave a void?

MS. HOOD: Yes, it does.

SENATOR PETRIS: As I understand it, the order says, "Hey, you can't take these families apart and just concentrate on children. You've got a massive agency here. It has different compartments in it. This one specializes in children; this one specializes in adults; this one in aunts; this one in uncles, and so forth --"

MS. HOOD: Right.

SENATOR PETRIS: "-- now, that's not right. We want you to have an overall comprehensive view of the family."

Now, that would call for more than just saying "don't just concentrate on children." Wouldn't that call for something positive?

MS. HOOD: Yes, it does. And that's why we went back --

SENATOR PETRIS: I'm trying to find out is that what you're doing?

MS. HOOD: Yes, that's why we went back and looked to the AFDC program and came up with some options in the proposal that I mentioned earlier which would specifically deal with homeless families.

SENATOR PETRIS: Now another question here, and I think I'm close to the end, Mr. Chairman. I'm sorry about the time.

I'm quoting this direct here:

> "Right after the former Deputy Director in charge of Community Care Licensing was transferred, Right Way Home Finders was granted a license to operate statewide even though at least two counties will not assign children to the organization."

It doesn't say why.

Are you familiar with the Right Way Home Finders organization and the fact that they were licensed?

MS. HOOD: Yes, yes.

SENATOR PETRIS: They are licensed?

MS. HOOD: Yes.

SENATOR PETRIS: Did you play any part in that process, or was that all done by your Deputy?

MS. HOOD: Well, it's all done by the Deputies, but both the former Deputy and the current Deputy brought it to my attention.

What had happened was, that particular organization had an application pending with us for 11 months. And also tied with that, the organization had been given a license that erroneously stated that it was a statewide license that they could operate.

So they have been operating all of that time assuming they had the license.

SENATOR PETRIS: During the 11 months while they were waiting?

MS. HOOD: Right. And the issue there was that they had made placements of children.

I was involved because it was "what should we do at this point?"

It seemed that the only prudent course was to keep things as they are so that we didn't have to remove children from the homes that they had already settled in, and to ask that organization then to come forward with a new licensing application, which they did. And we subsequently granted them a provisional license, although that may not be the correct term. It had many stipulations on what they had to do to improve. And the Licensing Deputy has been monitoring them, so that was the extent of my involvement.

SENATOR PETRIS: I've been told that that granting was precipitated by a threat that seemed to get some pretty bad undue pressure on the Agency involving Mr. Qatsha, some past connection with the applicant.

MS. HOOD: We thoroughly investigated that and found that that was not the case.

SENATOR PETRIS: Not true?

MS. HOOD: Yes.

SENATOR PETRIS: Is that the internal investigation --

MS. HOOD: Yes.

SENATOR PETRIS: -- that was conducted by Health and Welfare?

MS. HOOD: Yes, uh-huh. That was a piece of it, yes.

SENATOR PETRIS: Has that been completed now?

MS. HOOD: Yes.

SENATOR PETRIS: Is that the type of report that's made public or at least made known to Legislators on inquiry?

MS. HOOD: Well, it's my understanding that there was no report, that this was an internal investigation that was requested by the Agency, and when it was completed I think it was a verbal report back to the Agency Secretary.

SENATOR PETRIS: And the finding was there was in fact no such --

MS. HOOD: That's correct.

SENATOR PETRIS: -- no such improper pressure and threats and so forth?

MS. HOOD: That's correct.

SENATOR PETRIS: Are you familiar with that report?

MS. HOOD: I'm familiar with the outcome, just a verbal.

SENATOR PETRIS: It wasn't a written --

MS. HOOD: No, not that I'm aware of anyway.

SENATOR PETRIS: There's no report available that I could take a look at?

MS. HOOD: Not that I'm aware of, no.

SENATOR PETRIS: Were you involved in the investigation?

MS. HOOD: Many of us were interviewed in terms of impressions and kind of to establish the facts. So I was involved only as a person who was interviewed.

SENATOR PETRIS: Who requested the investigation?

MS. HOOD: The Agency Secretary.

SENATOR PETRIS: Mr. Allenby or the prior?

MS. HOOD: No, Mr. Allenby.

SENATOR PETRIS: Mr. Allenby?

MS. HOOD: Yes. And this really, Senator, was based on the continual charges of potential conflict and really --

SENATOR PETRIS: Well, it puts you in a bad spot. That's why I'm going into this. It's not fair really to --

MS. HOOD: The Secretary's position was, then, let's do the investigation and have it over and done with, and if there is something there, we'll do something about it, and if there isn't, then things will stay as they are.

SENATOR PETRIS: If I wanted to find out more detail about the Department's overall view of the homeless problem and such programs as it might be developing, would Mr. Allenby be the proper one to do it? Is it going right out of his office --

MS. HOOD: Yes, it is.

SENATOR PETRIS: -- or is it coming from some of the Deputies?

MS. HOOD: Mr. Allenby is heading it up because there's many departments that are involved, including my department. And so he has a staff person that is the lead on this, and we're on a working group within the Agency. Probably he is the best person to get the biggest picture.

SENATOR PETRIS: Does this group meet regularly?

MS. HOOD: Yes, they have. They haven't met within the past few months, but before that we were meeting very regularly.

SENATOR PETRIS: Thank you.

Thanks, Mr. Chairman.

CHAIRMAN ROBERTI: Senator Craven.

SENATOR CRAVEN: I was going to move, Mr. Chairman.

CHAIRMAN ROBERTI: Senator Craven makes a motion.

SENATOR CRAVEN: I move that --

CHAIRMAN ROBERTI: That Ms. Hood's confirmation be recommended to the full Senate?

SENATOR CRAVEN: Exactly.

CHAIRMAN ROBERTI: Chief Deputy Director of the Department of Social Services.

Is there any opposition in the audience?

Seeing none, the Secretary will call the roll.

SECRETARY WEBB: Senator Ellis.

SENATOR ELLIS: Aye.

SECRETARY WEBB: Senator Mello. Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is four to nothing; confirmation is recommended to the Floor.

Congratulations. This time we promise we won't call you back.

SENATOR PETRIS: Just take care of the homeless.

CHAIRMAN ROBERTI: Let's go into recess for five minutes.

(Thereupon a brief recess was taken.)

CHAIRMAN ROBERTI: We have one more Governor's Appointee, Robert M. Rees, Superintendent Deuel Vocational Institution.

MR. REES: Senators, Robert M. Rees, Superintendent of DVI, Deuel Vocational Institution.

CHAIRMAN ROBERTI: Mr. Rees, we will ask you what we ask all the Governor's Appointees: Why you feel you're qualified to assume this position?

MR. REES: Well, I'm a career employee. I've been with the Department for 33½ years. I've worked in a variety of assignments and worked up through the ranks. I've been a superintendent or warden at three institutions now: the one at Sierra Conservation Center near Jamestown; San Quentin institution; and the one I have now, I was superintendent of this one 10 years prior to the change in the law which changed it from CEA to a Governor's appointment.

I'm trying to retain my old job.

(Laughter.)

CHAIRMAN ROBERTI: Very good, maybe we can help you.

SENATOR CRAVEN: That's a kind of blatant frankness.

MR. REES: Well, it hasn't fallen apart for 10 years, but what it'll do tomorrow I don't know.

(Laughter.)

CHAIRMAN ROBERTI: I just have a couple questions, mainly some information that I would like to update.

DVI is an occupational training facility. How many people are you able to place in the education, training or work programs?

MR. REES: To -- as students or after they graduate?

CHAIRMAN ROBERTI: Both.

MR. REES: Well, I'm going to have to dodge a little bit on the graduation.

We have about close to 600 people in the program right now. We have a little over 300 -- 350 I think it is -- in academic, and over 200 in vocational training programs. We're probably going to be reducing some of the vocational training programs because we're starting to reduce the population and we can't afford or support that kind of vocational training.

But it's really less of a vocational and academic institution now than it was when it was originally constructed in '53. It was constructed in '52 and opened in '53, but we still have 15 vocational training courses there, and they're still reasonably well filled. We're short a couple of instructors in the vocational training program, but other than that the classes are, you know, rocking along, 22 people or so.

And the placement, I'm not too sure about. We have an apprenticeship program in, I think, seven of our different shops. And of course, those that are in an apprenticeship program have a pretty positive possibility of a job when they get out.

Those in the rest, you now, it depends on what the trade will allow in the community that they're released to, but we don't have, as far as I know, any statistics on how many of them are successfully placed or how many of them subsequently at a later time, after many of them are released, go into the program and the skill that they've learned.

CHAIRMAN ROBERTI: Is overcrowding causing a problem with the programs you have, or have you been able to adapt to it?

MR. REES: Not with the programs, not with the training programs, because that will continue. You'll either have them or not have them depending on how many inmates you have and how many inmates you can supply to the vocational program.

But it creates problems throughout the rest of the institution. It increases the pressure on everything: the celling, the showering, the feeding, the use of the canteen, the recreational area, and everything else. So there are a lot of difficulties created by overcrowding, not necessarily in our vocational or academic areas.

SENATOR CRAVEN: Where is Deuel located?

MR. REES: Near Tracy, California.

SENATOR CRAVEN: So it's up here relatively close to Sacramento?

MR. REES: Yes, sir. Too close.

SENATOR CRAVEN: Do you have a psychological testing unit where you are?

MR. REES: No, sir. We have two psychiatrists and one psychologist but no testing unit, no, sir.

SENATOR CRAVEN: I see, but could an inmate get psychological counseling in your institution?

MR. REES: He could and does. If he is deemed to be psychotic we transfer him to the Medical Facility near Vacaville.

SENATOR CRAVEN: Would they be held separate from working if they were involved with that type of consultation with a psychiatrist?

MR. REES: You mean separate from the inmates that are working?

SENATOR CRAVEN: Well, I mean would they work in their normal work routine hours and have that in addition to it, or would they just have one or the other? Could they be workers and go through this counseling at the same time?

MR. REES: They would have to be unless there were some medical need for them not to work. They would have to be working and then going through the psychiatric or psychological counseling.

SENATOR CRAVEN: What the institution does, you train men to do various trades, presumably. Do they manufacture there as well?

MR. REES: We have a prison industries program manufacturing primarily metal products.

SENATOR CRAVEN: I see.

MR. REES: We have a mattress factory; we have a shorts factory; we have a couple of other minor industries, the farm, the dairy. The dairy's not minor; it's a major industry.

SENATOR CRAVEN: Yes.

MR. REES: And a freight service operation that delivers the finished products throughout the state.

But primarily the manufacturing area of prison industries is metal products: chairs, tables.

SENATOR CRAVEN: I see.

MR. REES: We don't make the desks, but we make chairs and tables.

SENATOR CRAVEN: Do we have in the system, not necessarily your institution, any organization or operation that makes wood furniture?

MR. REES: Well, yes. I'm not running the Department, but I know there are two. There's one in San Quentin and there's one in Chino. There may be others that I'm not aware of.

SENATOR CRAVEN: Well, I'm asking this for a specific reason which has nothing to do with your confirmation, but just as a matter of information I appreciate your answers.

CHAIRMAN ROBERTI: You handle less mature inmates. Is that an age criteria or is that some other kind of criteria you use?

MR. REES: Well, we really -- we're getting an older population now. When we first started, it was -- the prison was designed, the enabling legislation established that prison for those too sophisticated for the Youth Authority institutions but

that were sentenced to the Youth Authority, and those too unsophisticated for the adult institutions but that were sentenced through the Adult Authority.

At that time, about 1200 of the 1500 population was Youth Authority. Now I think the other day we only had 35 Youth Authority wards there, and they're pretty sophisticated individuals in order to be there.

But primarily now our population is an adult felon commitment. The average age now, the mean is 28, the median is about 30. The last I checked, and that was last October, I think, was three were 17 and we had one at 71. So, we run quite a range there.

CHAIRMAN ROBERTI: Are any of them maximum security?

MR. REES: We have a 144-cell cell block that is maximum security, and the inmates in it are max. We have another 48 cells that we've doubled up to some extent, and we're calling that a closed. It's an outside cell construction, but we're using it for the hard to manage inmate.

CHAIRMAN ROBERTI: What are the criteria they use when they assign them to you on maturity factor?

MR. REES: At DVI Deuel?

CHAIRMAN ROBERTI: Yes.

MR. REES: We're classified as a Level III institution, and then that's a security level both in management of escape potential, management of behavior. We're just below the level that they classify inmates to San Quentin and to Folsom. So, we're called a heavy-medium custody institution.

They can be in that category either because they like to misbehave, or they have a significant amount of time to serve and pose some significant risk to escape.

CHAIRMAN ROBERTI: Thank you very much.

Any further questions?

Is there any opposition in the audience?

SENATOR CRAVEN: I'd move the confirmation of Mr. Rees to the Floor.

CHAIRMAN ROBERTI: Senator Craven moves Mr. Rees' confirmation as the Superintendent of Deuel Vocational Institution.

Secretary will call the roll.

SECRETARY WEBB: Senator Ellis.

SENATOR ELLIS: Aye.

SECRETARY WEBB: Senator Mello. Senator Petris. Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is three to nothing; confirmation is recommended to the Floor.

Congratulations.

MR. REES: Thank you, Senator.

(Thereupon this portion of the Senate Rules Committee hearing was terminated at approximately 3:25 P.M.)

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CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 21st day of May, 1987.

EVELYN MIZAK
Shorthand Reporter

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1987
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HEARING

SENATE RULES COMMITTEE

STATE OF CALIFORNIA

STATE CAPITOL

ROOM 3191

SACRAMENTO, CALIFORNIA

WEDNESDAY, JUNE 24, 1987

2:33 P.M.

Reported by:

Evelyn Mizak
Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR JIM ELLIS

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

MEMBERS ABSENT

SENATOR WILLIAM CRAVEN, Vice Chairman

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Appointments

ALSO PRESENT

LINDA STOCKDALE BREWER, Director
Office of Administrative Law

G. MITCHELL WILK, Member
Public Utilities Commission

SENATOR HERSCHEL ROSENTHAL, Chairman
Senate Energy and Public Utilities Committee

I N D E X

	Page
Proceedings	1
Governor's Appointees:	
LINDA S. BREWER, Director Office of Administrative Law	1
Motion	2
Questions by SENATOR PETRIS re:	
Streamlining the Process	3
Public Hearings	4
Benefit of Review Process	5
Definition of "Comment"	6
Responses Complying with Statute	7
Treatment of Agencies	10
Assisting Agencies	11
Sufficiency of Staff	13
Statute Flaws	14
Informing the Public	16
Contacting Legislation's Author	17
Agency Notification	18
Committee Action	19
G. MITCHEL WILK, Member Public Utilities Commission	20
Questions by SENATOR ROSENTHAL re:	
Major Philosophic Changes in PUC	22
Utility Ratemaking Procedure	23
Utility Diversification	24
Public Involvement	27
Litigation Costs	27

I N D E X (Continued)

	Page
Adequate Staff Funding	28
Major Issue of PUC	29
Motion	30
Committee Action	30
Termination of Proceedings	31
Certificate of Reporter	32

P R O C E E D I N G S

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CHAIRMAN ROBERTI: Governor's Appointees appearing today, Linda Brewer, Director of the Officer of Administrative Law.

It seems like only yesterday you were here.

MS. BREWER: Four years and 16 days ago.

CHAIRMAN ROBERTI: We'll ask you why you feel you're qualified to retain this position?

MS. BREWER: Thank you very much.

As I indicated, it was four years and 16 days ago that I appeared before this Committee before you honorable gentlemen. At that time I indicated that if you chose to confirm my appointment to the position of the Director of the Office of Administrative Law, I would improve access to the process of developing regulations.

I also indicated that I would open up the process so that Legislators more clearly understood what it was we do and how we do it.

And I also promised that I would clean up the regulations that had not been cleaned up under the AB 1111 review process.

We have done all of that under my direction during the last four years, and in addition we have computerized the process. And I hope during the next four years to be able to make the California Administrative Code accessible, to not only Members of the Legislature but private citizens through computer

access. We also intend to have completed the first codification of the California Administrative Code with an index and thesaurus.

And in addition to that, I look forward to working cooperatively with all of you during the next four years.

CHAIRMAN ROBERTI: Thank you very much, Mrs. Brewer, and I think you have. Basically I think the Office is run very well.

MS. BREWER: Thank you, sir.

CHAIRMAN ROBERTI: Very smoothly. I would be happy to confirm my vote of four years and vote for your retention.

Are there any questions? Senator Ellis.

SENATOR ELLIS: Move confirmation.

CHAIRMAN ROBERTI: Senator Ellis moves the confirmation be granted.

Senator Petris.

SENATOR PETRIS: When we were considering the confirmation of your chief deputy, there were some problems I discussed with him at the time. Some of the answers he wasn't able to give because it had to come from the boss. Now that the boss is here, I'd like to go into them.

On the basis of your statement, I'm ready to make the motion and move and everything else, but --

MS. BREWER: I accept that. Thank you.

(Laughter.)

SENATOR PETRIS: There are some other factors here. One of the things I went over with Mr. Smith was the big, long hassle with B.C.D.C. And most of that has apparently been resolved, but

I'm told that in order for them to resolve it, they had to put together about an 800-page report to satisfy your agency.

As I look into it further, I'm told that this agency which really came out of a bi-partisan drive to streamline government -- Leo McCarthy had a role in it; Monagan worked on it before that -- and yet, here's what I'm told and I'd like you to comment on it.

Before the Office was created, the process of promulgating regulations followed a certain course and seemed to be fairly expeditious.

Now the complaint from some of the agencies is that they're overwhelmed with requirements for special notices, paper work, all commentary, and every scrap of paper that has anything to do with the regulation has to be included. And if they're not included, and they try to condense it somehow, the thing is rejected.

The net result it, it takes a lot longer now than it did before, so the streamlining process, instead of being streamlined, is getting stretched out and made more complex and much longer.

The question is: What's the benefit of that when it seems to fly against the mission of the agency and the statute as I remember it and as it's set forth?

Can you comment on that?

MS. BREWER: I'd be happy to.

The process was indeed expeditious prior to OAL being created. In fact, we had one staff person. An agency clerk-

typist in most cases typed up a set of regulations that went immediately to the Secretary of State's Office and they were filed.

Witness our having to go back through all those regulations that had been adopted prior to 1980 and clean them up. The fact that they had been done --

SENATOR PETRIS: Didn't they have public hearings?

MS. BREWER: No public -- well, they did have public hearings, but there was no review process. So, you could file regulations with the Office of Administrative Hearings, I think it was at that time.

SENATOR PETRIS: Yes, but the law always required that they have public hearings.

MS. BREWER: Yes.

SENATOR PETRIS: I remember attending some of them in the past.

I've been to some where they absolutely mauled the legislation and came out with regulations contrary to the statute, and that's why I was attending. It's called administrative subversion of a statute that you don't like. I don't mean you, but some of the agencies prior to your time. That's why I had an interest in attending some of the hearings.

MS. BREWER: Right, but prior to that time --

SENATOR PETRIS: What you're saying is that after the hearings, they would hand the regulations to a secretary, and get it typed, and send them right over?

MS. BREWER: Exactly, and there was no review process. There was only one staff person.

SENATOR PETRIS: What's the benefit of the review process?

MS. BREWER: The benefit is that my reading of the statute says that each member of the public has an opportunity to comment, and that opportunity has meaning, and therefore we review each and every comment. And it does take a long time.

For example, we have regulations now, the mountain lion regulations. I think you've probably heard about those in the paper.

SENATOR PETRIS: We might save you some work on that before this is over.

(Laughter.)

MS. BREWER: That's the subject of another hearing, I hope.

But there are 18 boxes of comments on that. And our attorneys and our paralegals will be reviewing each and every one of those comments.

And if the agencies don't respond to any one of those comments, they will be rejected. That's not my choice; that was the Legislature's choice in enacting the A.P.A. The statute says verbatim: Each and every comment must be responded to or the regulation must be rejected.

It also says that if they fail to include any of the data, the supporting data that supports their position in adopting the regulation, we also have to reject it.

So, we get requests and comments from many of your constituents -- not yours, I'm speaking generically -- and they expect to have those addressed by the agencies. So I would be derelict, I do believe, in my duties to permit agencies to streamline the process to the extent that private citizens' comments no longer meant anything.

SENATOR PETRIS: Let's say we have the mountain lion thing, and let's say there's 5,000 comments.

What's a comment? A letter? Or a statement made by a person at the hearing?

MS. BREWER: I can vary. We get in addition to the entire transcript of the hearing so we can double-check the agencies that way, submissions of testimony. Sometimes it's a letter; it may be a position statement varying in length from anywhere from 2 pages to 200, but it's a position on -- for example, some individual may indicate that we do not believe it's necessary to adopt the mountain hunt regulations in this manner. The agency may say: So what; we've decided to do it. That's not appropriate. That's not an appropriate response to the comment.

They would have to say: Our studies indicate that the number of mountain lions in the state of California has declined to leave a significant low -- you know, something that's responsive to the issue.

I haven't read them yet, so that's all I know about them.

SENATOR PETRIS: I would think that most of the comments don't have proposed drafts of regulations. They're policy comments; aren't they?

In other words, they say: You've got to toughen these laws. Or, there's enough laws and we don't need to toughen them. There's too many, so you ought to cut them down.

MS. BREWER: No, I'm pleased to say that because we've done such a tremendous job on providing access to citizens through our information program, the comments are very meaningful. Some of them are well-researched. They have case law citations in some cases, but they basically have a lot of data; you know, facts to support them.

SENATOR PETRIS: What constitutes a response that complies with the statute?

MS. BREWER: It depends on the issue. What might be a comment that I could give you?

SENATOR PETRIS: Well, any of the examples you're citing on the mountain lions. They're saying --

MS. BREWER: I haven't read those.

SENATOR PETRIS: Well, pick any of them.

MS. BREWER: Let's not --

SENATOR PETRIS: B.C.D.C.

MS. BREWER: That one will still be before us, and I think it would probably be inappropriate for me to comment.

SENATOR PETRIS: It's not all finished yet?

MS. BREWER: That will come back to us in July.

SENATOR PETRIS: Well, pick any, a small agency.

MS. BREWER: Okay, I'll pick a factual example.

About three years ago, we received a request from the public to have an agency changed the parrot regulations in the

state of California. As it turns out, the Department of Health Services has a set of regulations that mandates that all parrots that are sold as commodities across the counter, or pet shops, where ever you sell them, have to have a steel band on their legs of one-quarter inch.

Well, one of the comments that came in from the English Vegetary Society -- and I cite these facts so you can check them if you wish -- was that this is an inappropriate regulation because it mandates a standard; it puts us out of business. It puts us out of business because the kinds of birds that we sell, the parrots that they sell, the legs start at three-quarters of an inch. So, by mandating those bands, they were chopping off the legs of a whole segment of the small business community.

So the comment in that case was that the agency had said: Well, nonetheless, because the majority of the birds in California have one-quarter inch legs, we're going to do it anyway.

That would have been an inappropriate response. And as it turned out, the agency acknowledged the response because the other side had shown the factual -- a factual demonstration that there would be damage if they went ahead with the regulation the way it was presented.

Was that responsive to your question?

SENATOR PETRIS: Well, it gives me some idea.

I'm trying to understand the process, because there's something here that doesn't make a lot of sense to me. Maybe we need to amend the statute.

You get 5,000 comments, and 4,900 of them are identical, and you get 100 that are a little different. If you don't respond to every one of the 4900 -- not you, the agency -- their regulation goes out.

Is that what you're telling me?

MS. BREWER: No, the statute allows for substantial compliance. So, if you've got many times --

SENATOR PETRIS: Well, you said earlier they've got to answer every single one or out it goes.

MS. BREWER: No, I'm going to --

SENATOR PETRIS: Now it's --

MS. BREWER: Given that hypothetical --

SENATOR PETRIS: You really mean substantial --

MS. BREWER: No, I don't.

If there are 4,999 comments as you indicate, and 4,000 of them say the same thing, they can group those together as one comment. It doesn't make sense to say: We've got to answer Joe Blow and Sally Jones and Mary Taylor. If they all are saying: "We are in favor of this regulation," there's no need for them to waste paper in that sense.

SENATOR PETRIS: All right.

MS. BREWER: But it's mostly the issues -- the comment has to really be a comment, not a retort or a commendation on the agency's effort.

SENATOR PETRIS: Has to be fairly specific?

MS. BREWER: Yes, has to be something that lends --

SENATOR PETRIS: One of the things we went over with Mr. Smith was the difference in treatment of different agencies. Now, some of them are staffed with experienced counsel and others aren't. I don't know how many have been replaced; I haven't had occasion to check it, but during the Governor's first term, a lot of attorneys were pulled out; positions were removed because of budget problems, you know, financial problems.

And that left some of the smaller agencies with a very major shortfall on the amount of legal services. So they were handicapped in trying to get the proper legal drafting and legal analysis which didn't meet the standards of your shop.

On the other hand, there were other agencies, because of their size, they had a lot more attorneys, and they can devote more time to it.

Now, are they all treated alike, or do you have some flexibility there in how you deal with each one of those?

MS. BREWER: They are all treated alike. We have no flexibility.

However, we do make accommodation for that. We have a service called Attorney of the Month. We've had that for the last year-and-a-half, where one attorney is taken off file review. He doesn't have anything to do with files and he's there to serve the agencies.

And many agencies have taken advantage of that program. That person can tell them -- in fact, we've even gone to the departments, some of the smaller departments, and explained to them how do go about the process.

SENATOR PETRIS: I thought somewhere there was a regulation that prohibits that, prohibits that kind of give and take. And I was asking Mr. Smith what the basis of that policy was.

Apparently it's changed.

MS. BREWER: The basis of what policy?

SENATOR PETRIS: His impression was that once the regulations are submitted by the agency, there's no informal sitting down and talking with them and pointing out to them --

MS. BREWER: No, no, that's correct.

SENATOR PETRIS: -- how their draftsmanship is poor --

MS. BREWER: That's correct.

SENATOR PETRIS: -- in an informal way in order to speed up the process --

MS. BREWER: That's correct.

SENATOR PETRIS: -- and also be educating the agency staff.

MS. BREWER: That's correct. Once they are submitted to us, we have 30 days, and that's it. There's no -- remember, my staffing too has been cut by about, what, 12 attorneys in the last four years. But beyond that, we have a 30-day time limit. Nothing has ever gone through our office, been submitted to our office, that it is not out of there in 30 days.

So, if we took time during that 30-day period to try to tutor the agencies, we would never get anything done --

SENATOR PETRIS: Is there any effort made prior to that? Are they invited to try their first draft out on your attorneys

to make sure they're -- especially new people, inexperienced ones, or maybe a new agency that hasn't had an opportunity to do it before? Isn't there some informal process there where they can tutored beforehand?

MS. BREWER: I -- we encourage agencies to take training sessions that we offer. We have a formal training program not only for agencies but also for private individuals who want to learn how to get involved in the process. We're making a video tape on how to do it.

I submitted to you last week -- you may not have received it -- but it's a handbook, a "How to Adopt Regulations", an 8½ by 11 that is written in newspaper style so there're not very many --

SENATOR PETRIS: Is this it here?

MS. BREWER: That's it -- not many five-syllable words.

SENATOR PETRIS: Now, the attorney that goes out full-time to help them, at what stage is he helping them? It's all they see, not after they've been drafted?

MS. BREWER: No, we encourage them. In fact, I encourage agencies, if you know you're going to have a major program coming through and you really have to get it out on deadline, come to us before you even start the process.

You know, it's almost like starting a pleading in a jury trial --

SENATOR PETRIS: Is there accessibility when they do that?

MS. BREWER: Yes.

SENATOR PETRIS: Do you have the people to do the work?

MS. BREWER: Yes -- not to do the work, but we will sit down --

SENATOR PETRIS: I don't mean do their work, but to do what's needed to help them?

MS. BREWER: Yes.

SENATOR PETRIS: To guide them.

MS. BREWER: Yes. We encourage that. It saves us a lot of time.

We're not a punitive agency. We really do like to have the agency regulations go through the first time because it saves us time and them too.

SENATOR PETRIS: That's the whole point of my line of questioning.

MS. BREWER: Yes.

SENATOR PETRIS: It looks like it makes sense.

MS. BREWER: Those who have used it get them through normally their first time around. And so I appreciate the opportunity to again restate, we have an Attorney of the Month program. We have video tapes. Our attorneys will go to the agencies, but they have to let us know in advance. You can't get in the middle of a trial, so to speak, and say: Hey, I've changed my mind, Judge; let me go back to law school. You know, they have to it up front.

SENATOR PETRIS: Some judges have told some lawyers that.

(Laughter.)

SENATOR PETRIS: Well, okay, let's see, I think I only had one other question.

Another question is, based on your experience as the head of this agency, do you see any flaws in the statutes that ought to be amended, where we can be of help in the Legislature to accomplish the mission of simplifying and speeding up and so forth?

MS. BREWER: To accomplish the mission of simplifying and speeding up and so forth.

SENATOR PETRIS: Well, the whole purpose was, you know, everybody's running around saying there's too many laws, there's to many regulations. The first phase of that Office threw out a lot of regulations.

Do you remember?

MS. BREWER: Yes.

SENATOR PETRIS: Before your time, historically it took all the dead wood out and it reduced the number of regulations by an enormous number. I don't remember what it was; it was very dramatic. And that was Phase One.

Phase Two is to use English instead of legalese in drafting the regulations, and comply with sound drafting principles, and stay within the law and the purpose of the particular statute. That's Phase Two. That's what you're in now, I guess.

It seems to me that maybe this requirement for that much response to that much comment might need some review.

I can see a group that could sabotage the adoption of regulations by loading up the place with such an enormous number of comments which varied -- they wouldn't be cranked out on a mimeograph machine where everybody's just signing a form -- but each one would have enough difference in it to compel the reviewing attorney to feel that it had to have an individual answer. So it clogs up the machinery because they're hostile to the statute. They don't want any regulations.

That's a possibility; isn't it? Maybe it's happened already, I don't know.

MS. BREWER: There are a lot of unanswered questions that we've been attempting to address by the data system that we put in place. What we're doing now is trying to determine over the last three years how many regulations have been rejected on the basis of failure to respond to comments. We're trying to determine how many were rejected on the basis of an agency's trying to go outside the scope of the authority conferred by the statute.

We hope to have that report completed by the end of this year. I think at that time we'll be able to assess really --

SENATOR PETRIS: It'll give you a much better picture.

MS. BREWER: -- what has been the role of the Office of Administrative Law.

SENATOR PETRIS: I'd sure like to get that information when you get it. I guess you'll make it known to us, too?

MS. BREWER: Yes, we intend to submit that report to the Legislature.

But I do think there needs to be some changes, and I think we might want to discuss whether or not the purpose really is to streamline, or whether or not it really is to make sure that people get -- the people who are regulated get a chance to have some say in how the things are being done, rather than just bureaucrats. I think there has to be a balance affected.

SENATOR PETRIS: They always did, though. That's the purpose of the public hearing. That's been established for decades.

MS. BREWER: Few people show up. We still get files where there are no comments from the public.

SENATOR PETRIS: Are there more people now coming in than before? There really aren't too many more.

MS. BREWER: No, I don't think so.

SENATOR PETRIS: Well, so how can we measure that improvement?

Mr. Smith said you had certain mailing lists that the agencies had, and they informed interested persons. That's usually people who are directly involved and affected and licenses and so forth. Beyond that, there's very little representation from the general public, for example, or the consumer except for organizations.

MS. BREWER: We hope to change that.

SENATOR PETRIS: How're you going to accomplish that?

MS. BREWER: Well, I'm very optimistic that by changing -- by finally adding an index to the California Administrative Code -- as a practicing attorney, I couldn't find any regulation. You just have to flip through the pages, literally.

So, by the end of this calendar year, we will have for the first time in the State of California an index to the regulations. We will have a thesaurus. We'll go in the process of streamlining a lot of the duplicative jurisdictions. You know, because right now you've got 26 Titles, none of which have subject matter indices, none of which have uniform structures as far as how they're placed; articles and sections being equal.

SENATOR PETRIS: None of the private publishers do that?

MS. BREWER: None. Well, they can't find the regulations.

Last time I came before you, I said we're going to find out how to get the regulations through.

This time I'd like to help us find all the regulations and put them in a place where people can take a look at them.

And then I think we will get more participation, and we'll be able to take a look at some of the statutes, too, that may need to be codified because we'll have a data base that shows the statutes and the regulations that flow therefrom, and find out whether or not they need to be repealed because the statute's been repealed.

Now right now, statutes get repealed and the regulations stay on the books.

SENATOR PETRIS: This isn't at your level; that's before you get to it, but does the agency make any contact with the author of the legislation or committees to find out who the opponents and proponents were as a means of informing people that regulation hearings are going to be held and proposed regulations to be considered?

MS. BREWER: Not to my knowledge. I don't believe that's a general practice.

SENATOR PETRIS: Wouldn't that be a good practice?

MS. BREWER: I think that would be an excellent practice.

SENATOR PETRIS: There are a lot of people who show up for some of the bills, and some of the bills they don't get anybody, just like in your hearings.

How do we go about accomplishing that?

MS. BREWER: Well, one of the services that we'd be happy to offer at OAL is to alert an author every time a notice comes through. Once we get a formal notice that an agency's about to adopt a reg., just to send a little note saying that we -- the bill you authored two years ago is about to be implemented through the regulatory process.

And we have the capability of doing that with our computer system.

SENATOR PETRIS: Whom does the agency notify? Let's say it's a brand new chapter to a code that's not just an amendment of some little code section, so it opens up a new chapter.

Whom do they notify?

MS. BREWER: The statute requires that they maintain a mailing list of small business persons and, quote, "interested persons". In the dry cleaning industry that might be a list of dry cleaners, I guess. And they have to mail it out to those folks who are interested persons and --

SENATOR PETRIS: Usually that means licensees; doesn't it?

MS. BREWER: We've never examined the question of who interested persons are, but they just kind of mail it out to who ever sends in a postcard saying they want to be notified.

SENATOR PETRIS: Thanks very much.

Thank you, Mr. Chairman.

MS. BREWER: Thank you.

CHAIRMAN ROBERTI: Any further discussion or debate? Do I hear a motion?

Senator Ellis has moved, excuse me.

Any opposition in the audience?

Seeing none, Secretary will call the roll.

SECRETARY WEBB: Senator Ellis.

SENATOR ELLIS: Aye.

SECRETARY WEBB: Senator Mello.

SENATOR MELLO: Aye.

SECRETARY WEBB: Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Senator Craven. Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is four to nothing; confirmation is recommended to the Floor.

MS. BREWER: Thank you very much.

CHAIRMAN ROBERTI: You're welcome. Congratulations.

The next appointment is Mr. G. Mitchell Wilk, Member of the Public Utilities Commission.

MR. WILK: Mr. Chairman, good afternoon.

CHAIRMAN ROBERTI: Good afternoon.

We'll be glad to ask you the same question: Why you feel you're qualified to retain this position?

MR. WILK: Well, actually not retained. It's my first -- well, I guess --

CHAIRMAN ROBERTI: You've been on for how long?

MR. WILK: About six months.

I guess for one thing, I pay my PG&E bill on time.

But, Mr. Chairman, Members, I believe my qualifications to be a Member of the California Public Utilities Commission to be basically three-fold: my education, my professional experience, and candidly, my personal approach.

I won't duplicate what's already in front of you. However, as you know, my educational background includes a degree in finance and economics and a Master's Degree in finance, and I've taught finance at the graduate level.

Now, the importance here is that I believe the underlying principles of these subjects are important tools at the Public Utilities Commission because eventually all issues focus on financial considerations.

Secondly, during and since my college years I've enjoyed the professional challenges and opportunities of having worked in both the corporate and government worlds, often in positions that required a knowledge and understanding of both.

Again I won't repeat what has already been provided to you, but suffice it to say that I believe that this experience

has provided me the skills and the background and knowledge to be responsive and fair on the PUC.

Perhaps most importantly, however, Mr. Chairman, I believe I'm qualified because of the approach I will take on the issues that come before the PUC. I strongly believe that success on the Commission requires a temperament based upon the principles of balance and equity, access, and a willingness to listen and learn.

We are facing perhaps the most challenging times ever to confront public utilities here in California and all over the nation, and practically all the industries we regulate are affected by new marketplace competitive pressures that cannot be ignored.

As regulators, we must approach these new challenges with a commitment to be balanced and fair. While my instincts tell me that competition is a good thing, regulators must strike a balance between the legitimate desires of those who wish to compete with the need to protect ratepayers who have no choice.

So, Mr. Chairman and Members, I believe that the combination of my education, my experience, and my approach will help assure that I will carry out my constitutional obligations in a fair, equitable and compassionate manner.

CHAIRMAN ROBERTI: Very good.

Any questions? Senator Rosenthal.

SENATOR ROSENTHAL: Yes, Mr. Chairman and Members, I'm here to endorse the appointment of Mitch Wilk to the PUC.

In a number of occasions that I've had to deal with him as Chairman of the Energy Committee, I don't look at it as somebody that we always agree, but he is someone who is willing to listen.

I suggest that perhaps what I'd like to do at this point is to spend a few minutes just asking some general questions so that we'll have at least on the record a little bit of his philosophy and some other things that might come out.

In the last year the PUC, of course, has undergone a dramatic change in its membership because of the new appointees.

Do you believe that the PUC will undergo any major transformations or approach of philosophy as a result of this new Deukmejian Commission?

MR. WILK: Well, of course, I can't speak, Senator, for my -- for my colleagues.

My feeling is that the PUC, by its very nature, is difficult to kind of carve up into partisan pieces. In fact, in the six months I've been there, I can't see where partisanship really has any -- any play in it at all.

Candidly, just the opposite in fact. If you take a look at some of the major decisions that have been made with respect to enhancing competition within the regulated marketplace occurred, frankly, at the -- from the old Commission, the former Commission.

So, I don't see any major shifts, Senator. This is a very deliberative process with a lot of different, conflicting objectives that we have -- we have to pay very close attention to.

SENATOR ROSENTHAL: One of the things that I and some other Members of the Legislature were kind of concerned with in the past is the concept of shortcutting the utility ratemaking procedure.

Do you care to comment on that?

MR. WILK: Yes, sir. In fact, well, are you referring, Senator Rosenthal, to the new procedure that we want to test for a year that would accelerate the special contract procedures?

SENATOR ROSENTHAL: That's one of them. The other is the one where without really too much of a hearing, a settlement was arrived at.

MR. WILK: That's the So. Cal. Gas stipulation.

SENATOR ROSENTHAL: Yes.

MR. WILK: For your information, of course, I abstained from that decision.

I think there -- I think that there are legitimate places where we need to expedite the regulatory process, very candidly. And I -- we're dealing with, as I said in my opening statement, with competitive pressures that affect every industry that we oversee.

And we have -- we are in the process of releasing for a test period of one year new procedures that would allow us to expeditiously review special contracts with respect to bypass.

With respect to the stipulation process, that process has obviously received a great deal of attention, and I am told that we in fact did have public hearings during the stipulation process, and we did invite public comment.

There's a difficult balance we have to draw here. On the one hand we want to try to accelerate the process. On the other hand, we are constitutionally bound to the rules and practice of due process. It's not really an easy balance to strike.

I frankly think the stipulation process is an important one to retain. But frankly I -- you know, if we need to take another look at it in the sense of how can we better provide for public involvement, I'd be happy to, as we've talked about privately, to look into that.

SENATOR ROSENTHAL: A number of years ago the San Diego Gas and Electric Company applied for a holding company. This is on the subject of diversification. And the PUC stipulated certain conditions to protect the rate base. As a result, they decided not to go ahead with that kind of a procedure.

Now, more recently the Southern California Edison Company has applied to the Commission to form a holding company.

What are your views on utility diversification? Do you think that the decision on the San Diego case was correct? And if so, would you just give me an idea of what we might look forward to in terms of diversification and how we really protect the rate base from anything that might happen with that unregulated business?

MR. WILK: Yes, sir. I'd be happy to comment.

Just one general observation, however, and that is that obviously we do have the Southern California Edison case in front of us. I would not want to risk prejudging that case.

SENATOR ROSENTHAL: No.

MR. WILK: Just in terms of my general philosophy, Senator Rosenthal, I believe our primary objective should be in -- to protect the independent economic vitality of the underlying utility.

But aside from that, frankly, I think -- I think I would want to look very carefully at creating too much of a burden on the holding company. Providing we have it in place, Senator, the proper kinds of controls, proper kinds of protections for the ratepayer, frankly I think we have in essence accomplished our task.

I think to go beyond that, try to restrict the actual holding company, I think frankly would create more problems, and in addition probably diminish the very advantages of diversification, which frankly I happen to embrace.

SENATOR ROSENTHAL: I'm not opposed to that. My concern is, if something happens to that new organization over which the utility has no control, and then the bonding rate is affected, which then affect the rate base, how do we deal with that?

MR. WILK: Very frankly, this is a concern of mine, too. This is something that I'm going to, hopefully, use the Southern California Edison case to explore further.

But I -- I believe that in some fashion -- for example, I believe in the Illinois case the holding company went bankrupt, but the underlying utility, there wasn't even a change in its bond rating. And hopefully we can strike some kind of balance here so that the same kind of conditions would apply here in California.

But I think the utility has to be financially segregated enough, if you will, a moat put around it, so that those economic vagaries at the holding company level don't affect the utility.

Now, the mechanics of that, the art and skill of doing that, I think, is going to -- frankly, that's what I'm looking forward to in the Edison case, to see if we can't provide that.

I wish I could be more specific, Senator.

SENATOR ROSENTHAL: No, that's fine.

I don't have the objection with them investing in another company.

I am very concerned about what might happen to the rate base as a result of whatever that offshoot does or doesn't do.

MR. WILK: Well --

SENATOR ROSENTHAL: And I also have a concern about a utility using the value of the utility to guarantee something on that offshoot.

MR. WILK: That would frankly concern me, too. And I think we need to be -- to be very careful that we create that moat, if you well, around the utility.

Again, that's something that could be easier said than done. I recognize there are a lot of different ways of doing it.

But I do -- I strong believe in diversification. I'd like that, obviously, to go on the record. But at the same time, I believe that we need to guarantee the independent economic vitality of that -- of that utility and to protect the ratepayer.

SENATOR ROSENTHAL: Right.

One of my principle concerns is the involvement of people to the process. And as a result, we've carried the legislation creating a Public Advisor's Office, and we've even expanded it now to another place in Los Angeles, and also the role of the public staff.

How do you see input to the Commission through the Public Advisor? Do you think we're moving in the right direction for people to have access to the system or to the public staff?

MR. WILK: Yes, sir.

I do think we're moving in the right direction, thanks to your legislation to do so. We -- as you know, Commissioner Hulett, who's the President of the PUC, thoroughly embraces this demystifying of the process. And frankly, until I got to the PUC, I myself was mystified as to how it worked.

I frankly think we have a ways to go, but we are, I think, sending the right signals. We want to open up that process. We want to encourage involvement. So, I think it's working.

SENATOR ROSENTHAL: I don't want to get into the problem of Diablo in terms of whatever's happened so far, except in one instance.

At some point the utility is going to ask the Commissioners to put on the rate base their litigation costs, whatever they happen to be. Right now they're talking about $100 million. I don't know whether that's --

MR. WILK: Somebody's getting pretty rich.

SENATOR ROSENTHAL: I just don't know, you know, whether that's a legitimate figure or not, but I've heard it as high as $100 million in terms of the litigation.

At some point, it seems to me, you might have to deal with some sort of a cap, because if whatever happens continues into the court process, then untold millions of dollars could be spent on the litigation.

And at the same time, I understand that there are costs to presenting your point of view, whatever it happens to be.

Are you satisfied that the staff will have the amount of money it needs to counter the large sums of money that the utility has in terms of litigation?

MR. WILK: Senator Rosenthal, at this juncture, candidly, I see no reason why we wouldn't. Frankly, I think we have the staff and the resources to properly match those that are used on the opposite side of the table.

I have great faith both in terms of our own staff, the public staff and others, and we'll be able to adequately represent our side of it, if you will.

I'm not trying to say we necessarily embrace the public staff view, obviously.

SENATOR ROSENTHAL: No, no. I don't want to get into that at all.

MR. WILK: But I'm confident that in terms of the total resources of the Public Utilities Commission at this juncture, I think we have the adequate staff to do it.

SENATOR ROSENTHAL: At some point, I guess, the Attorney General may also be involved.

Would you think that they ought to also have the funds necessary to accomplish whatever has to take place?

MR. WILK: Well, I'd prefer to let the Attorney General answer that question, Senator. I really --

SENATOR ROSENTHAL: Okay.

MR. WILK: I just really don't know how to respond to it.

SENATOR ROSENTHAL: All right.

Finally, then, in your opinion, what is the major issue facing the PUC over the next four years?

MR. WILK: I think definitely responding to these competitive marketplace pressures.

As I said in my opening statement, it's affecting practically every industry, Senator Rosenthal, that we oversee. And I think we need to be responsive, but we need to be balanced and fair.

I happen to think that competition is a good thing providing the benefits of competition outweigh the costs. And I as a Commissioner, you have my assurance that I'm going to make sure that we -- we are very comfortable that in fact benefits outweigh the costs before we decide.

But I think competition in the marketplace is the major issue.

SENATOR ROSENTHAL: Senators of the Rules Committee, I have been working with Mr. Wilk for some period of time now.

We've discussed some of these issues. I just wanted him to repeat some of these on the record so we would all be aware of some of the concerns that I have.

I think he's a fine Commissioner. I'm pleased to endorse him and would hope that you would acquiesce.

MR. WILK: Thank you, Senator.

CHAIRMAN ROBERTI: Thank you, Senator.

Are there any other questions?

I think Senator Rosenthal's covered the gamut.

SENATOR PETRIS: Move.

CHAIRMAN ROBERTI: Senator Petris moves confirmation.

Secretary will call the roll.

SECRETARY WEBB: Senator Ellis. Senator Mello.

SENATOR MELLO: Aye.

SECRETARY WEBB: Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Senator Craven. Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is three to nothing; confirmation is recommended to the Floor.

MR. WILK: Thank you, Mr. Chairman.

SENATOR ROSENTHAL: Congratulations.

MR. WILK: Thank you.

SENATOR MELLO: He's got three Democrats.

CHAIRMAN ROBERTI: Yes, you've got the Democrats.

(Laughter.)

MR. WILK: I'll remember that; I certainly will. Thank you very much, gentlemen.

(Thereupon this portion of the Senate Rules Committee hearing was terminated at approximately 3:35 P.M.)

--ooOoo--

CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 25th day of June, 1987.

Evelyn Mizak

EVELYN MIZAK
Shorthand Reporter